

## 70 Am. Jur. 2d Sheriffs, Police, and Constables IX Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### IX. Indemnity of Officers; Indemnity Bonds


[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  89.1 to 92

### A.L.R. Library

A.L.R. Index, Bonds and Undertakings  
A.L.R. Index, Constables  
A.L.R. Index, Deputies  
A.L.R. Index, Judicial and Execution Sales  
A.L.R. Index, Marshals  
A.L.R. Index, Police and Law Enforcement Officers  
A.L.R. Index, Process and Service of Process and Papers  
A.L.R. Index, Public Officers and Employees  
A.L.R. Index, Sheriffs  
West's A.L.R. Digest, [Sheriffs and Constables](#)  89.1 to 92

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 93

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### IX. Indemnity of Officers; Indemnity Bonds

## § 93. Indemnity of officers, generally; right to demand indemnity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  89.1, 90

### Forms

Am. Jur. Legal Forms 2d, Sheriffs, Police, and Constables—Forms Regarding Indemnification When Placing Levy on Personal Property[\[Westlaw®\(r\) Search Query\]](#)

Am. Jur. Pleading and Practice Forms, Sheriffs, Police, and Constables—Forms Regarding Indemnification Where Levy is Placed on Personal Property[\[Westlaw®\(r\) Search Query\]](#)

As a general rule, if a sheriff who has been given process for service entertains a doubt as to the title to the property to be levied on, he or she may demand indemnity and is under no obligation to act unless it is given.<sup>1</sup>

Statutes have been enacted to control the right to and allowance of indemnity.<sup>2</sup> By virtue of statutory provisions in some states, when an officer has demanded and accepted indemnity, he or she is then compelled to proceed with the levy and sale.<sup>3</sup> Under certain statutory provisions, indemnity cannot be demanded when a levy is to be made on real estate.<sup>4</sup> In addition, where the statute relates only to personal property, the sheriff has no right to demand indemnity where the execution is on real property.<sup>5</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- 1 [Robey v. State, 94 Md. 61, 50 A. 411 \(1901\); Canfield-Caulkins Implement Co. v. Cowden, 70 Wash. 587, 127 P. 216 \(1912\).](#)

As to indemnity bonds, generally, see Am. Jur. 2d, Bonds[\[Westlaw®\(r\) Search Query\]](#).

As to persons liable on bonds indemnifying those liable for wrongful executions, generally, see Am. Jur. 2d, Executions and Enforcement of Judgments[\[Westlaw®\(r\) Search Query\]](#).

2 [Baker v. Duddleson, 125 Ill. App. 483, 1906 WL 1752 \(3d Dist. 1906\).](#)

3 [Smith v. Graham, 30 Idaho 132, 164 P. 354 \(1917\).](#)

4 [Chenault v. W.T. Adams Mach. Co., 98 Miss. 326, 53 So. 629 \(1910\).](#)

5 [State ex rel. Continental Supply Co. v. Fontenot, 152 La. 912, 94 So. 441 \(1919\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 94

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### IX. Indemnity of Officers; Indemnity Bonds

### § 94. Right to demand indemnity in absence of adverse claim

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  90

Under certain statutory provisions, the sheriff or constable is deemed to have an unqualified right to require an indemnifying bond before he or she makes levy, without regard to whether the demand for a bond is reasonable, and although no claim to the property has been asserted by a third person.<sup>1</sup> In general, however, a sheriff's demand for an indemnity bond prior to levying execution must be based on reasonable doubt as to either the ownership of the property, the enforceability of the judgment, or other matters affecting the propriety of the execution.<sup>2</sup>

#### Definition:

"Reasonable doubt," within the meaning of a statute giving a sheriff the right to demand an indemnity bond prior to execution of real property, means doubt for which a reason can be given.<sup>3</sup>

#### Observation:

The reasonableness of the officer's doubt as to ownership of property to be taken on execution is an objective standard rather than an arcane or subjective belief, and thus, the officer must state the reason for requiring security.<sup>4</sup>

In demanding the bond, the officer must act in good faith, and in the absence of any claim to the property by a third party, the right to demand an indemnity bond is generally denied.<sup>5</sup> If property levied on by an officer under execution is in the possession of the defendant, it is presumptively the defendant's, and the officer, in the absence of notice of anything to rebut such a presumption, has no right to demand indemnity or refuse to make the levy and no right to release the property after making the levy upon the refusal of the plaintiff to indemnify the officer.<sup>6</sup>

A judgment debtor has no right to demand an indemnity bond to protect the sheriff. Thus, the court's order to the sheriff to proceed with an execution sale of real property to satisfy a judgment without the indemnity bond, which the sheriff required from the judgment creditor but the judgment creditor refused to post, has been held to be a matter between the judgment creditor and the sheriff concerning which the judgment debtor had no standing to complain.<sup>7</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [Canfield-Caulkins Implement Co. v. Cowden](#), 70 Wash. 587, 127 P. 216 (1912).
- 2 [Pickens v. Baker](#), 588 S.W.2d 406 (Tex. Civ. App. Amarillo 1979); [Rankin v. Belvin](#), 507 S.W.2d 908 (Tex. Civ. App. Houston 14th Dist. 1974), writ refused n.r.e., (July 10, 1974) (holding that a constable's reliance on the county attorney's opinion as to whether he needed to protect himself by an indemnity bond in making a levy in no way removed the requirement that the constable must have reasonable doubt in his discretion as to the propriety of the execution).
- 3 [Ter Maat v. Barnett](#), 156 Wis. 2d 737, 457 N.W.2d 551 (Ct. App. 1990) (an unspecified possibility of litigation did not constitute reasonable doubt pursuant to statute so as to justify a sheriff department's demand for security prior to executing judgment against real property).
- 4 [Ter Maat v. Barnett](#), 156 Wis. 2d 737, 457 N.W.2d 551 (Ct. App. 1990).
- 5 [Mayfield Woolen Mills v. Lewis](#), 89 Ark. 488, 117 S.W. 558 (1909); [Robey v. State](#), 94 Md. 61, 50 A. 411 (1901).
- 6 [Pilcher v. Hickman](#), 132 Ala. 574, 31 So. 469 (1902).
- 7 [Roquemore v. Kellogg](#), 656 S.W.2d 646 (Tex. App. Dallas 1983).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 95

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### IX. Indemnity of Officers; Indemnity Bonds

## § 95. Implied contract of indemnity where sheriff acts at direction of levying creditor

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  89.1, 90

Even in the absence of a bond of indemnity or an express contract to indemnify, it is well settled that when a sheriff makes a levy in accordance with instructions of the judgment creditor, the sheriff may, if he or she does not knowingly act in an unlawful and illegal manner, recover damages from the judgment creditor to indemnify the sheriff.<sup>1</sup> In such a case, an implied promise of indemnity arises.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

<sup>1</sup> [Arnold v. Fowler](#), 94 Md. 497, 51 A. 299 (1902); [Weir v. Hum Tong](#), 100 Mont. 1, 46 P.2d 45 (1935).

<sup>2</sup> [Weir v. Hum Tong](#), 100 Mont. 1, 46 P.2d 45 (1935).

As to implied contracts by indemnity, generally, see Am. Jur. 2d, Indemnity[[Westlaw®\(r\) Search Query](#)].

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 96

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### IX. Indemnity of Officers; Indemnity Bonds

## § 96. Invalidity of agreements to indemnify for breach of duty or commission of wrong

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  89.1, 90

An agreement to indemnify a sheriff, constable, or other such officer, for a known violation of duty, or against the intentional and known commission of a trespass, crime, or wrong, or a bond given for that purpose, is void as opposed to public policy and unenforceable.<sup>1</sup>

A bond of indemnity to a sheriff to prevent his or her levy of an execution is not, however, against public policy or void when the parties all act in good faith and there is an honest doubt and some uncertainty under the law as to the right to make the levy.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [Ray v. McDevitt, 126 Mich. 417, 86 N.W. 543 \(1901\).](#)  
As to validity of contracts of indemnity, generally, see Am. Jur. 2d, Indemnity[[Westlaw®\(r\) Search Query](#)].
- 2 [Ray v. McDevitt, 126 Mich. 417, 86 N.W. 543 \(1901\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 97

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### IX. Indemnity of Officers; Indemnity Bonds

## § 97. Effect of indemnity; liability of indemnitors

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  92

Generally, persons giving an indemnity bond to a sheriff to induce him or her to levy an execution become liable as joint trespassers with the sheriff in case the seizure is wrongful.<sup>1</sup> Although in a sense the makers of the bond are substituted in liability for the sheriff, the execution of an indemnity bond does not prevent the debtor from maintaining an action against the sheriff who has levied upon exempt property.<sup>2</sup>

When the indemnitor refuses, upon request, to give instructions to the sheriff, he or she will be liable for any loss incurred by the sheriff while proceeding in good faith.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- <sup>1</sup> [Woodworth v. Gorsline](#), 30 Colo. 186, 69 P. 705 (1902).
- <sup>2</sup> [Winstead v. Hicks](#), 135 Ky. 154, 121 S.W. 1018 (1909).
- <sup>3</sup> [Ireland v. Linn County Bank](#), 103 Kan. 618, 176 P. 103, 2 A.L.R. 184 (1918).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 98

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### IX. Indemnity of Officers; Indemnity Bonds

## § 98. Defenses

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  91

### Forms

Notice—To indemnitor—To defend against officer for wrongful seizure and sale of property. Am. Jur. Pleading and Practice Forms, Sheriffs, Police, and Constables—Form Notice Regarding Indemnity[[Westlaw®\(r\) Search Query](#)]

Under the rule of the primary liability of the sureties on a sheriff's indemnity bond, an unsatisfied judgment in replevin against a sheriff for wrongful seizure of property under execution is not a bar to a subsequent action in trover to recover the value of the property from those who executed the indemnity bond.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

<sup>1</sup> [Woodworth v. Gorsline, 30 Colo. 186, 69 P. 705 \(1902\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 99

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### IX. Indemnity of Officers; Indemnity Bonds

## § 99. Conclusiveness against indemnitor of judgment against sheriff

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  89.1

### Forms

Am. Jur. Pleading and Practice Forms, Sheriffs, Police, and Constables—Form Notice Regarding Indemnity [[Westlaw®\(r\) Search Query](#)]

A judgment against a sheriff for wrongful seizure of property on execution or attachment is conclusive against those who executed the indemnity bond, particularly where the indemnitors come in and openly defend the suit against the sheriff.<sup>1</sup>

If a sheriff has been indemnified against all costs and damages which he or she may sustain by reason of levying an execution on certain personal property, and judgment is rendered against the sheriff for liabilities growing out of the levy, the judgment, in an action brought by the sheriff against his or her indemnitors, is only prima facie evidence that the sheriff has been damaged in the amount named therein where the sheriff did not notify them of the action against him or her nor ask them to assist in the defense thereof.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

<sup>1</sup> [Lovejoy v. Murray, 70 U.S. 1, 18 L. Ed. 129, 1865 WL 10754 \(1865\).](#)

<sup>2</sup> [Ireland v. Linn County Bank, 103 Kan. 618, 176 P. 103, 2 A.L.R. 184 \(1918\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 100

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### IX. Indemnity of Officers; Indemnity Bonds

## § 100. Measure of recovery

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  89.1

The indemnity to which an officer is entitled may include damages, costs, and other legal expenses, including counsel fees.<sup>1</sup>

An action on an indemnity bond, given to a sheriff before selling at execution, for damages due to the sheriff's sale of exempt property, is in the nature of trover, and the measure of recovery is the value of the property with interest. In an action by an execution debtor on an indemnity bond given to the sheriff, for damages due to the sheriff's sale of exempt property, it is an error to set off the damages by the debt for which the plaintiff in execution had judgment.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

<sup>1</sup> [Ireland v. Linn County Bank](#), 103 Kan. 618, 176 P. 103, 2 A.L.R. 184 (1918) (permitting the sheriff to recover reasonable and necessary attorney's fees for the services of an attorney in protecting the sheriff's interests in personal property held under the execution, and in resisting actions against him growing out of levying the execution; mileage fees for the distances necessarily traveled by him in performing his duty under the execution; fees paid by him for publication of notice of sale of the property under the execution; and the expenses incurred by him in caring for the property).

<sup>2</sup> [Winstead v. Hicks](#), 135 Ky. 154, 121 S.W. 1018 (1909).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables X A Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### A. In General

[Topic Summary](#) | [Correlation Table](#)

### Research References

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  126 to 130, 160 to 171

#### A.L.R. Library

A.L.R. Index, Constables

A.L.R. Index, Deputies

A.L.R. Index, Marshals

A.L.R. Index, Police and Law Enforcement Officers

A.L.R. Index, Public Officers and Employees

A.L.R. Index, Sheriffs

West's A.L.R. Digest, [Sheriffs and Constables](#)  126 to 130, 160 to 171

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 101

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### A. In General

### § 101. Actions on bonds

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  126 to 130, 160 to 171

In the multitude of situations in which there is a breach of the official bond of a sheriff or constable, an action may be maintained thereon.<sup>1</sup>

A bonding statute applicable to sheriffs provides the plaintiff with a statutory cause of action in addition to a common law cause of action.<sup>2</sup> The individual's common law right to maintain an action on the sheriff's bond is concurrent with, rather than superseded by, any statutory remedy.<sup>3</sup>

A suit on an official bond may be either in tort or based on contract.<sup>4</sup> Thus, a suit on a deputy's bond is an action in contract for tortious acts of a deputy in the performance of his or her official duties.<sup>5</sup>

As a general rule, the sureties on an official bond are liable only for defaults occurring during the sheriff's term of office, but a suit may be brought after the term of office has expired, for a default occurring during the term.<sup>6</sup> To recover anything on the bond of a sheriff or constable, the plaintiff must allege and prove a breach of the terms of that instrument and that he or she suffered damages on account thereof.<sup>7</sup>

An action on a constable's bond is not premature if it is brought after a demand for payment of an execution upon a judgment against him or her, and refusal, although before the return day of the execution.<sup>8</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

1 As to the various acts which may create liability on the bond of a sheriff or other similar officer, see §§  
79 to 88.  
2 Sellers v. Rodriguez, 149 N.C. App. 619, 561 S.E.2d 336 (2002).  
3 Com. ex rel. Duvall v. Hall, 194 Va. 914, 76 S.E.2d 208 (1953).  
4 Dixon v. American Liberty Ins. Co., 332 So. 2d 719 (Ala. 1976); Johnson v. Williams' Adm'r, 111 Ky. 289,  
23 Ky. L. Rptr. 658, 63 S.W. 759 (1901) (action or contract); State ex rel. Russell v. Leedy, 141 W. Va. 474,  
91 S.E.2d 477 (1956) (action in tort).  
5 Booth v. Firemen's Ins. Co. of Newark, New Jersey, 223 Ga. App. 243, 477 S.E.2d 376 (1996).  
6 Dickson v. McCartney, 226 Pa. 552, 75 A. 735 (1910).  
7 Davis v. Hall, 72 Or. 220, 143 P. 893 (1914).  
8 Slattery v. Schapero, 217 Mass. 71, 104 N.E. 440 (1914).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government  
Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 102

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### A. In General

### § 102. Necessity for demand or notice before suit

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#) 🔑 129

Whether a demand and notice of claim against a peace officer is required to bring an action depends largely upon the applicable statutory provisions and upon the nature of the peace officer's alleged default. Under some statutes, a notice of claim may be required only for certain types of action.<sup>1</sup> Thus, a notice of claim may not be required to permit an action against a sheriff<sup>2</sup> but may be a condition precedent to a tort claim against a sheriff's department and deputy sheriffs.<sup>3</sup>

A demand is generally necessary where the peace officer's possession is not wrongful.<sup>4</sup>

#### Practice Tip:

Counsel planning to bring an action against a peace officer should be alert to the various statutes requiring notice of claims against governmental units before any action can be brought against their officers or employees. An action against a peace officer may be barred because of the plaintiff's failure to provide timely notice of his or her intent to sue the county.<sup>5</sup>

However, notice to the governmental unit may not be required in a jurisdiction where, for example, the county as a unit is not responsible for the acts of the sheriff or his or her deputies;<sup>6</sup> the statute does not apply to actions against individual county officers, such as the sheriff;<sup>7</sup> or the governmental unit enjoys immunity for the alleged cause of action.<sup>8</sup>

A letter may be insufficient to satisfy a statutory notice requirement for bringing a claim against a state where the letter does not in any way state a claim or demand against the sheriff.<sup>9</sup> A notice of claim against a county sheriff may be insufficient where it is given to a county attorney's office, and the county attorney's office does not represent the sheriff.<sup>10</sup> On the other hand, it has been held that a plaintiff, who had filed two notices of claim with the county, for wrongful death and tort, respectively, was not required to file a notice of claim naming the sheriff in his official capacity.<sup>11</sup>

The sufficiency of a notice of claim has been determined in a number of cases.<sup>12</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

## Footnotes

- 1 [Greenwade v. Idaho State Tax Com'n](#), 119 Idaho 501, 808 P.2d 420 (Ct. App. 1991) (the failure of a taxpayer to file a statutory notice of claims of emotional distress, fraud, and trover and conversion resulting from alleged trespass and seizure of property by a sheriff and a state tax commissioner in collection of unpaid state income taxes barred a tort suit); [Olson v. Equitable Life Assur. Co.](#), 2004 SD 71, 681 N.W.2d 471 (S.D. 2004) (mortgagors' negligence claim against a sheriff, in his individual and official capacities, for failing to discontinue a sheriff's sale after being informed that a mortgagee had been paid in full and no longer wanted to proceed with a sale, was a tort-based claim that was subject to a statute requiring notice to the county auditor whenever any claim was made against the county or its employees).  
A statute requiring counties to be presented with a notice of claim within 12 months after it accrued did not apply to a wrongful-death action against a county sheriff in his official capacity. [Strickland v. Wilson](#), 205 Ga. App. 91, 421 S.E.2d 94 (1992).
- 2 [Bowman v. Campbell](#), 193 A.D.2d 921, 597 N.Y.S.2d 772 (3d Dep't 1993).
- 3 [Bardi v. Warren County Sheriff's Dept.](#), 194 A.D.2d 21, 603 N.Y.S.2d 90 (3d Dep't 1993).  
Under New York law, the arrestee was required to file notice of claims within 90 days after the sheriff deputies' allegedly falsely arrested him and used excessive force, as a condition precedent to bringing state law tort-based claims against the county, sheriff, and deputies, arising from the incident. [Houghton v. Cardone](#), 295 F. Supp. 2d 268 (W.D. N.Y. 2003).
- 4 [Mariner v. Wasser](#), 17 N.D. 361, 117 N.W. 343 (1908).
- 5 [Burks v. Bolerjack](#), 427 N.E.2d 887 (Ind. 1981) (false imprisonment action against the sheriff and county dismissed as to the county because of notice statute and therefore dismissed as to the sheriff).
- 6 [Williams v. Town of Irondequoit](#), 59 A.D.2d 1049, 399 N.Y.S.2d 807 (4th Dep't 1977).
- 7 [Hambrick v. Beard](#), 366 So. 2d 58 (Fla. 2d DCA 1978).
- 8 [Hollyfield v. Papantoniou](#), 588 S.W.2d 560 (Tenn. Ct. App. 1979) (alleged improper execution of an arrest warrant).  
As to application of governmental immunity to peace officers, generally, see § 64.
- 9 [Smart v. Monge](#), 667 So. 2d 957 (Fla. 2d DCA 1996).
- 10 [Pirez v. Brescher](#), 584 So. 2d 993 (Fla. 1991) (notice given only to a county attorney's office did not suffice to support an action on a claim brought against a sheriff's office where the county was not named as defendant since the sheriff was an elected constitutional officer who retained his own counsel and the county attorney's office, thus, did not represent the sheriff).
- 11 [Mosey v. County of Erie](#), 117 A.D.3d 1381, 984 N.Y.S.2d 706 (4th Dep't 2014).
- 12 [Williams v. Toliver](#), 759 So. 2d 1195 (Miss. 2000) (a plaintiff substantially complied with state statutory notice provisions, although in identifying one defendant, who was a constable, he listed the wrong county as the constable's employer and provided only the middle and last name of the constable, as the constable had

been with the county for 12 years at the time of the incident and it was inconceivable that the administrator of the county would not recognize the listed person as the constable); [Olson v. Equitable Life Assur. Co., 2004 SD 71, 681 N.W.2d 471 \(S.D. 2004\)](#) (absent evidence that a county auditor received any type of timely notice, actual or constructive, that a lawsuit could be coming from mortgagors against a sheriff, the mortgagors did not substantially comply with a notice statute for actions against public entities).

Notice of claims against a sheriff of false arrest and imprisonment was sufficient to provide notice of claim required under the former version of a statute requiring provision of notice of claim against a state or political subdivision even though the notice was sparse and did not include the claimant's date and place of birth and Social Security number. [Williams v. Henderson, 687 So. 2d 838 \(Fla. 2d DCA 1996\)](#).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 103

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### A. In General

### § 103. Venue and jurisdiction

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  131, 132

In some jurisdictions, the venue for an action against an officer is governed by statutes relating specifically to actions against such peace officers.<sup>1</sup> In other cases, statutory provisions regulating the venue of actions against public officers, generally, have been applied in actions and proceedings against county sheriffs.<sup>2</sup> Also, under a statute, where the foundation of a suit is a trespass, the suit may be brought in the county in which the defendant, or any one of several defendants, resides or may be found.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [White v. Fireman's Fund Ins. Co.](#), 233 Ga. 919, 213 S.E.2d 879 (1975).  
Sheriffs and deputies were local officers rather than state officers, and claims on sheriffs' official bonds did not have to be pursued before the State Industrial Commission since, in providing for organization of local governments, including election of sheriffs, the state constitution did not make the sheriffs state, rather than local, officers. [Hull v. Oldham](#), 104 N.C. App. 29, 407 S.E.2d 611 (1991).
- 2 [Massengill v. Superior Court In and For Maricopa County](#), 3 Ariz. App. 588, 416 P.2d 1009 (1966); [Brownell v. Aetna State Bank of Oelwein](#), 201 Iowa 781, 208 N.W. 210 (1926); [State v. District Court of Seventeenth Judicial Dist. in and for Valley County](#), 72 Mont. 56, 231 P. 395 (1924); [Wilson v. Sponable](#), 77 A.D.2d 799, 430 N.Y.S.2d 452 (4th Dep't 1980).  
A court lacked jurisdiction over an action against a county high sheriff and deputy sheriff alleging negligence in their individual capacities while acting within the scope of their employment as sheriffs in transporting a paraplegic prisoner where the prisoner failed to allege that statutory immunity provided to the sheriffs had been waived and failed to allege that the claims commissioner granted permission to sue the State. [Davis v. Mak](#), 19 Conn. L. Rptr. 274, 1997 WL 133410 (Conn. Super. Ct. 1997).

- 3                    [Miles v. Wright, 22 Ariz. 73, 194 P. 88, 12 A.L.R. 970 \(1920\)](#) (an action against sheriffs of different counties for false imprisonment).  
As to venue in actions for false arrest or imprisonment, generally, see Am. Jur. 2d, False Imprisonment.  
[\[Westlaw®\(r\) Search Query\]](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 104

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### X. Actions; Practice and Procedure

#### A. In General

## § 104. Service of process

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  136

A county clerk is not an agent of a sheriff for purposes of receiving service of process.<sup>1</sup>

A statute waiving sovereign immunity and requiring service of process on the state agency sued and the department of insurance does not require an arrestee to serve process on the department in a federal civil rights action against a county sheriff's department where the arrestee's claims are against individuals for their alleged violation of the arrestee's civil rights under color of state law and those claims could be brought against the sheriffs and deputies prior to waiver of sovereign immunity.<sup>2</sup>

In addition, simply because a sheriff's deputy was employed by a public defendant does not automatically entitle him or her to the protections of the state's governmental claims statute, and for the deputy to be entitled to assert a 90-day service requirement under the statute, he or she must have been discharging his or her official duties or acting in the course and scope of employment at the time of the accident.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

<sup>1</sup> [Mauro v. County of Winnebago](#), 282 Ill. App. 3d 156, 218 Ill. Dec. 135, 668 N.E.2d 619 (2d Dist. 1996).

<sup>2</sup> [Matthews v. Wells](#), 641 So. 2d 478 (Fla. 2d DCA 1994).

Reasonable cause was shown for a plaintiff's failure to perfect service upon the department of insurance within 120 days of filing suit against a sheriff, and thus, a trial court was within its discretion in declining to dismiss the action, where there was confusion and delay surrounding a stipulation of the parties in which counsel for the sheriff agreed to voluntarily accept service of an amended complaint, and rulings of the trial court originally struck an affirmative defense raising the service issue but subsequently allowed the issue

to be raised by motion to dismiss. [Sheriff of Brevard County v. Lampman-Prusky](#), 634 So. 2d 660 (Fla. 5th DCA 1994).

3

[Simmons v. Braquet](#), 762 So. 2d 766 (La. Ct. App. 1st Cir. 2000).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables X B Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### B. Parties

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [134](#), [135](#)

### A.L.R. Library

A.L.R. Index, Constables

A.L.R. Index, Deputies

A.L.R. Index, Marshals

A.L.R. Index, Police and Law Enforcement Officers

A.L.R. Index, Public Officers and Employees

A.L.R. Index, Sheriffs

West's A.L.R. Digest, [Sheriffs and Constables](#)  [134](#), [135](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 105

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### B. Parties

##### 1. In General

### § 105. Parties, generally; sheriff or sheriff's office

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  134

Parties defendant cannot include the sheriff's office, as compared to the sheriff himself or herself, where that office is not a legal entity capable of being sued.<sup>1</sup> However, in some states, the sheriff's office has a legal existence separate from the county and the State and is thus a suable entity.<sup>2</sup>

When a complaint, alleging that a county deputy sheriff was acting at all relevant times in his or her official capacity with respect to an arrest, and attempting to impute to a county liability for the sheriff's alleged violations of the complainant's constitutional rights premised upon claims of false arrest, false imprisonment, and malicious prosecution, the complaint alleged or reasonably implied that the sheriff was acting not manifestly outside the scope of his or her employment or official responsibilities, and thus, a county may have a statutory duty to defend the sheriff in an arrestee's action against the sheriff in his or her individual capacity.<sup>3</sup>

Although the sheriff may be, under a state constitutional provision, an independent agent, who employs his or her subordinates personally, where the county pays the employees' salaries, and is in that regard a joint employer, the county becomes a necessary party to a proceeding by such an employee against the sheriff.<sup>4</sup>

The sheriff is deemed not a proper party to an action seeking the return of funds formerly held by a bank as the result of a contingent liability agreement, and against which the sheriff had executed a writ of execution, where neither the sheriff nor the bank had possession of the funds in question nor did they make any claim thereto.<sup>5</sup> In addition, the sheriff need not be joined as a party defendant to an underlying action or suit as a result of which the sheriff collected money from a garnishee and paid it to the judgment creditor, for the sheriff to be ordered to refund the amount collected after the garnishment had been quashed,

because the sheriff, although not a party to the suit as such, was acting in an official capacity as an officer of the court when the sheriff received the money from the garnishee.<sup>6</sup>

A statute authorizing a "person aggrieved" to bring an action against an officer for failure to make timely return of a writ of execution or to make a sale of seized property allows judgment creditors to maintain such an action but does not provide the judgment debtors with standing to sue a noncomplying sheriff.<sup>7</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [Jenkins v. Jefferson Parish Sheriff's Office](#), 385 So. 2d 578 (La. Ct. App. 4th Cir. 1980), writ granted, 392 So. 2d 684 (La. 1980) and aff'd in part, rev'd in part on other grounds, 402 So. 2d 669 (La. 1981).  
A parish sheriff's department had no legal status allowing it to sue or be sued; that status was reserved for the sheriff. [Valentine v. Bonneville Ins. Co.](#), 691 So. 2d 665 (La. 1997); [Markley v. Town of Elton](#), 829 So. 2d 1213 (La. Ct. App. 3d Cir. 2002); [Ashy v. Miguez](#), 760 So. 2d 440 (La. Ct. App. 3d Cir. 2000), writ denied, 771 So. 2d 85 (La. 2000) (the sheriff, not the parish sheriff's office, is the constitutionally designated chief law enforcement officer of the parish).  
A sheriff's department was not a legal entity subject to suit and, thus, a driver, whose vehicle was hit by a deputy sheriff's vehicle, was precluded from suing the department for her alleged personal injuries as a result of the accident. [Ex parte Haralson](#), 853 So. 2d 928 (Ala. 2003).
- 2 [DeGenova v. Sheriff of DuPage County](#), 209 F.3d 973 (7th Cir. 2000).
- 3 [Whaley v. Franklin Cty. Bd. of Commrs.](#), 92 Ohio St. 3d 574, 2001-Ohio-1287, 752 N.E.2d 267 (2001).
- 4 [Connelly v. Amico](#), 72 Misc. 2d 644, 340 N.Y.S.2d 156 (Sup 1973), judgment aff'd, 43 A.D.2d 1016, 353 N.Y.S.2d 1021 (4th Dep't 1974).  
As to parties plaintiff and defendant, generally, see Am. Jur. 2d, Parties[[Westlaw®\(r\) Search Query](#)].
- 5 [Jack v. Fuzzell](#), 96 Idaho 888, 539 P.2d 241 (1975).
- 6 [First Nat. Bank in Chester v. Conner](#), 485 S.W.2d 667 (Mo. Ct. App. 1972).
- 7 [Efurd v. Hackler](#), 335 Ark. 267, 983 S.W.2d 386 (1998).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 106

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### B. Parties

##### 1. In General

## § 106. Misjoinder

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  134

There is no misjoinder of actions where an action is brought against a peace officer and against the surety on his or her official bond,<sup>1</sup> nor where an action is brought against several officers and their bonds, each bond given by a different surety.<sup>2</sup>

There is no misjoinder of parties defendant in an action against a partnership, the individual members thereof, and a sheriff for malicious prosecution.<sup>3</sup> Moreover, making the sheriff charged with execution of the writ a party defendant to a proceeding to annul an execution for alleged want of jurisdiction to enter the judgment on which it is based does not vitiate the proceeding for misjoinder of parties.<sup>4</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Miles v. Wright](#), 22 Ariz. 73, 194 P. 88, 12 A.L.R. 970 (1920); [State ex rel. Patterson v. Collins](#), 172 S.W.2d 284 (Mo. Ct. App. 1943).
- <sup>2</sup> [State ex rel. Patterson v. Collins](#), 172 S.W.2d 284 (Mo. Ct. App. 1943).  
As to the general subject of misjoinder of parties, see Am. Jur. 2d, Parties [Westlaw®\(r\) Search Query](#)].
- <sup>3</sup> [Page v. Citizens' Banking Co.](#), 111 Ga. 73, 36 S.E. 418 (1900).
- <sup>4</sup> [Gordon v. District Court of Fifth Judicial Dist.](#), 36 Nev. 1, 131 P. 134 (1913).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 107

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### B. Parties

##### 2. Action on Officer's Bond

## § 107. Parties defendant

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  135

The liability of a sheriff on his or her bond is in the sheriff's individual, not official, capacity, and suit against the sheriff on the bond must be in that capacity.<sup>1</sup> The sheriff might be sued as sheriff, that is in his or her official capacity, to recover property which he or she held as sheriff, but for any official nonfeasance, misfeasance, or malfeasance, the sheriff can only be sued as an individual.<sup>2</sup>

In an action against a sheriff, the plaintiff must ordinarily join the surety as a party to the action but failure to do so is not fatal and can be easily corrected by an amendment to the pleadings.<sup>3</sup>

Once a supervisory official has constructive or actual knowledge of the alleged deprivations of a citizen's civil rights by a subordinate officer, the supervisor's failure to stop the conduct may constitute a constitutional violation for which the supervisor may be liable in an action for deprivation of civil rights under the civil rights statute.<sup>4</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [State ex rel. Penrod v. French](#), 222 Ind. 145, 51 N.E.2d 858, 149 A.L.R. 1084 (1943).

<sup>2</sup> [State ex rel. Penrod v. French](#), 222 Ind. 145, 51 N.E.2d 858, 149 A.L.R. 1084 (1943).

Former employees' allegations of sexual discrimination by a sheriff arose from their termination from the sheriff's department, and since the sheriff retained final authority over all employment decisions pursuant to statute, he could not be sued for sexual discrimination in his individual capacity. [Buchanan v. Hight](#), 133 N.C. App. 299, 515 S.E.2d 225 (1999).

3 [Clark v. Burke County](#), 117 N.C. App. 85, 450 S.E.2d 747 (1994).

As to pleadings, generally, see §§ 122 to 126.

4 [Rodriguez-Esteras v. Solivan-Diaz](#), 266 F. Supp. 2d 270 (D.P.R. 2003), referring to [42 U.S.C.A. § 1983](#).

The fact that a supervising police officer gave another officer authority to go to a motorist's home to issue traffic citations, which resulted in the officer's alleged use of excessive force against the motorist and issuance of an improper citation for resisting arrest, did not render the city liable in an action for deprivation of civil rights under [42 U.S.C.A. § 1983](#) for the officer's actions where there was no evidence that the supervising officer was a policy-making official. [Hummel v. City of Carlisle](#), 229 F. Supp. 2d 839 (S.D. Ohio 2002).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 108

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### B. Parties

##### 2. Action on Officer's Bond

## § 108. Parties plaintiff

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  135

The jurisdictions are in conflict as to the right of an individual to maintain an action upon the bond of a peace officer, running to the public and conditioned upon the faithful performance of his or her duties as a guardian of the law. Such an action cannot be maintained by an individual member of the public to recover damages or penalties for injuries sustained by him or her at the hands of the officer at least in the absence of legislation expressly giving the individual a right of action on the bond.<sup>1</sup> Where a statute expressly provides that an action upon a sheriff's bond must be in the name of the State, no action can be maintained in the name of an individual injured by acts of the sheriff.<sup>2</sup> In some jurisdictions, however, an individual may maintain an action on a peace officer's official bond.<sup>3</sup>

The courts of one state will not take jurisdiction of an action by a citizen of another state for injury caused to him or her by a breach of the bond of a sheriff, given under the laws of such other state, by an act committed there, where the bond is payable to the State, and the action is to be brought in its name.<sup>4</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> Carr v. City of Knoxville, 144 Tenn. 483, 234 S.W. 328, 19 A.L.R. 69 (1921).
- <sup>2</sup> Brower v. Watson, 146 Tenn. 626, 244 S.W. 362, 26 A.L.R. 991 (1922).
- <sup>3</sup> City of Cairo, for Use of Robinson v. Sheehan, 173 Ill. App. 464, 1912 WL 2679 (4th Dist. 1912); Town of Lester, to Use of Richardson, v. Trail, 85 W. Va. 386, 101 S.E. 732 (1920).

A private person injured by an illegal search could bring an action in his own name against the sheriff and the surety on his bond, as being the real party in interest within the meaning of the statutes prescribing that an action must be prosecuted in the name of such party, and permitting the person entitled to the benefit of the security of a bond to sue thereon in his own name, notwithstanding a further statutory provision that an action on an official bond payable to the State must lie in the name of the people, to the use of any party aggrieved. [Lynch v. Burgess, 40 Wyo. 30, 273 P. 691, 62 A.L.R. 849 \(1929\).](#)

4

[Brower v. Watson, 146 Tenn. 626, 244 S.W. 362, 26 A.L.R. 991 \(1922\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables X C Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### C. Forms of Action

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#) 🔑 125, 127

### A.L.R. Library

A.L.R. Index, Action or Suit  
A.L.R. Index, Constables  
A.L.R. Index, Contempt  
A.L.R. Index, Deputies  
A.L.R. Index, Mandamus  
A.L.R. Index, Marshals  
A.L.R. Index, Police and Law Enforcement Officers  
A.L.R. Index, Prohibition Writ  
A.L.R. Index, Public Officers and Employees  
A.L.R. Index, Replevin  
A.L.R. Index, Sheriffs  
West's A.L.R. Digest, [Sheriffs and Constables](#) 🔑 125, 127

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 109

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### C. Forms of Action

##### 1. In General

## § 109. Form of action based on neglect, misconduct, or misbehavior of officer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  127

### Trial Strategy

[Excessive Force by Police Officer, 21 Am. Jur. Proof of Facts 3d 685](#)

[Negligent Vehicular Police Chase, 41 Am. Jur. Proof of Facts 2d 79](#)

[Sheriff's Negligent Failure to Attach Property, 17 Am. Jur. Proof of Facts 2d 715](#)

[Defense of a Police Misconduct Suit, 38 Am. Jur. Trials 493](#)

[Police Misconduct Litigation—Hostage Situation, 35 Am. Jur. Trials 505](#)

[Police Misconduct Litigation—Plaintiffs Remedies, 15 Am. Jur. Trials 555](#)

Under some statutes dealing with sheriffs' official bonds and providing for liability and a right of action on the bonds, a cause of action is available to victims of neglect, misconduct, or misbehavior of sheriffs independent of negligence claims, which are not viable because there is no special relationship or special duty running to victims.<sup>1</sup>

The statutory requirement of a bond to protect against neglect, misconduct, or misbehavior in performance of official duties or under color of office removes the sheriff from the protective embrace of governmental immunity but only where the surety is joined as a party to the action.<sup>2</sup>

Footnotes

- 1 [Greathouse v. Armstrong](#), 616 N.E.2d 364 (Ind. 1993) (no special duty or relationship existed between a motorcyclist and the sheriff's department, as needed for the motorcyclist's estate to have standing to recover in a negligence suit based on failure to dispatch a deputy to investigate a report of cattle on a highway, since any duty was owed to the general public); [Hull v. Oldham](#), 104 N.C. App. 29, 407 S.E.2d 611 (1991).  
A deputy who used racial epithets in an official conversation with a second deputy who was investigating an altercation between an African-American man and a Caucasian man did not owe a duty to the African-American man so as to permit recovery on the deputy's bond even though the second deputy asked the first deputy to speak with the Caucasian man, the Caucasian man chose to press charges, the African-American man was later arrested, and an arrest warrant for the Caucasian man did not issue. [Booth v. Firemen's Ins. Co. of Newark, New Jersey](#), 223 Ga. App. 243, 477 S.E.2d 376 (1996).  
The determination of a trial judge, that a sheriff's deputies did not use excessive force in getting a resident into an official vehicle for transportation to a hospital, was supported by the record, even though the resident, who brought a personal-injury action against the sheriff and deputies, alleged that the deputies used excessive force and caused injury to her back, where the deputy testified he spoke with the resident and gave her the choice of going voluntarily with the emergency medical technicians (EMTs) or going with him and that the resident refused to go with the EMTs, the deputy testified that the resident sat on the floor of her garage and refused to get up, the deputy testified that he again gave the resident the choice of coming freely or being forced or carried and the resident refused to get up, after the resident refused for a second time to go with the deputies, the deputies attempted to pick up the resident and carry her to the vehicle, and the deputy testified that the resident was put back down after she had begun to struggle. [Cloy v. Lee](#), 807 So. 2d 900 (La. Ct. App. 5th Cir. 2002).
- 2 [Summey v. Barker](#), 142 N.C. App. 688, 544 S.E.2d 262 (2001) (negligence action brought by inmate who suffered from hemophilia, for allegedly failing to respond properly to a nosebleed, where the complaint joined the surety as a party to the action).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 110

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### C. Forms of Action

##### 1. In General

### § 110. Replevin against federal officer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  127

Property taken by a United States marshal on a writ of attachment or execution from an owner not named in the process is held in his or her official capacity and under the control of the court, and the owner of the property can neither maintain replevin to regain its possession nor recover it other than by a proceeding in the court from which the process issued.<sup>1</sup> The marshal is not amenable to a state court as custodian of property which he or she claims to hold officially under process from a federal court.<sup>2</sup> The possession of property, by the marshal or his or her deputy, by virtue of a levy under an execution issued by a United States court is, in itself, a complete defense to a subsequent action of replevin in a state court without regard to the rightful ownership.<sup>3</sup> The federal court alone has jurisdiction to inquire into and determine all questions relating to such property, and the rights growing out of its custody, held by its own officer under color of its authority. However, rights of action exist against the marshal personally for his or her wrongful and illegal acts resulting in injury to third persons, excepting actions that involve the legal right to take the property seized out of the marshal's possession.<sup>4</sup> A third person, who is a stranger to the suit and claiming the property as owner, may prosecute his or her right to restitution in such case, by ancillary proceedings in the court in which the process issued, or the third person may pursue his or her remedy for damages against the officer, either personally for the trespass or for the breach of his or her official duty, upon his or her bond and against his or her sureties.<sup>5</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Gumbel v. Pitkin](#), 124 U.S. 131, 8 S. Ct. 379, 31 L. Ed. 374 (1888).
- <sup>2</sup> [Gumbel v. Pitkin](#), 124 U.S. 131, 8 S. Ct. 379, 31 L. Ed. 374 (1888).
- <sup>3</sup> [Covell v. Heyman](#), 111 U.S. 176, 4 S. Ct. 355, 28 L. Ed. 390 (1884).

4 [Gumbel v. Pitkin, 124 U.S. 131, 8 S. Ct. 379, 31 L. Ed. 374 \(1888\).](#)

5 [Covell v. Heyman, 111 U.S. 176, 4 S. Ct. 355, 28 L. Ed. 390 \(1884\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 111

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### C. Forms of Action

##### 1. In General

### § 111. Summary proceedings; contempt

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [125](#), [127](#)

In a number of jurisdictions, express provision is made by statute for summary proceedings against a sheriff or other officer and his or her sureties for delinquency or default in such officer's performance of his or her duties.<sup>1</sup>

It is the duty of a United States marshal who is in possession of property seized in admiralty, in case an order is given by the court for its release upon bond being given, to surrender it as directed in the order, upon payment of the marshal's fees and expenses of keeping it, and if the marshal fails to do so, the marshal may be proceeded against by attachment.<sup>2</sup>

Proceedings for the removal of the officer may be appropriate, where the default is grave;<sup>3</sup> the removal proceeding may be summary in nature under the applicable statute.<sup>4</sup> The burden in such a proceeding is on the State to prove the alleged ground for removal by evidence which is clear, satisfactory, and convincing.<sup>5</sup>

The sheriff or peace officer may also be subject to summary proceedings falling short of removal, such as contempt<sup>6</sup> or amercement.<sup>7</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Turner v. Fendall](#), 5 U.S. 117, 2 L. Ed. 53, 1801 WL 1067 (1801); [Mason v. Chase](#), 118 Vt. 369, 111 A.2d 246 (1955).

As to mandamus, generally, see Am. Jur. 2d, Mandamus[[Westlaw®\(r\) Search Query](#)].

2 U.S. v. Ames, 99 U.S. 35, 25 L. Ed. 295, 1878 WL 18238 (1878).  
3 As to grounds for and procedure in removal of peace officer, generally, see §§ 23 to 30.  
4 State v. Callaway, 268 N.W.2d 841 (Iowa 1978).  
5 State v. Callaway, 268 N.W.2d 841 (Iowa 1978).  
6 Ex parte Tyler, 149 U.S. 164, 13 S. Ct. 785, 37 L. Ed. 689 (1893); In re Irvin, 171 Ga. App. 794, 321 S.E.2d 119 (1984), judgment aff'd in part, rev'd in part on other grounds, 254 Ga. 251, 328 S.E.2d 215 (1985) (a county sheriff who did not follow the courts' directive regarding a transfer of a prisoner was in willful contempt of court).  
Inmate failed to serve a contempt citation and rule nisi on a sheriff and his employees, none of whom were parties to the defendant's criminal case, and thus, the trial court lacked jurisdiction over them on the inmate's claim that they obstructed his right to access a prison law library and other legal materials. [Schwindler v. State](#), 261 Ga. App. 30, 581 S.E.2d 619 (2003).  
As to contempt, generally, see Am. Jur. 2d, Contempt[[Westlaw®\(r\) Search Query](#)].  
7 § 113.

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 112

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### C. Forms of Action

##### 1. In General

## § 112. Prohibition

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  127

The well-settled rule that in the absence of a statute or constitutional provision extending the scope of the common law writ of prohibition, the writ will lie only against officers possessing or assuming functions or powers of a judicial character and will not issue to prevent the performance of ministerial or administrative acts or functions applies to sheriffs, police officers, and other similar officers.<sup>1</sup> Thus, because the levying and collection of an execution is a ministerial and not a judicial act, prohibition will not lie against a sheriff to prevent him or her from performing the act.<sup>2</sup> Nor will a writ of prohibition lie to prevent a chief of police of a city from enforcing an ordinance.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [State v. District Court of Fifteenth Judicial Dist. in and for Musselshell County, 53 Mont. 450, 164 P. 546 \(1917\).](#)
- <sup>2</sup> [Meserve v. Superior Court in and for Los Angeles County, 2 Cal. App. 2d 468, 38 P.2d 453 \(2d Dist. 1934\).](#)
- <sup>3</sup> [Racine v. District Court of Tenth Judicial Dist., 39 R.I. 475, 98 A. 97 \(1916\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 113

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### C. Forms of Action

##### 2. Amercement

### § 113. Amercement, generally; grounds

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  125

#### Forms

Forms relating to motions to amerce, see Am. Jur. Pleading and Practice Forms, Sheriffs, Police, and Constables [[Westlaw®\(r\) Search Query](#)]

An amercement is a money penalty in the nature of a fine imposed by statute upon a sheriff or similar officer for some misconduct or neglect of duty.<sup>1</sup> Where proper grounds for amercement are shown, it is the duty of the court to amerce.<sup>2</sup>

When a judgment creditor believes that a sheriff has failed to properly execute on a judgment debtor's property, he or she may bring an action against the sheriff for amercement pursuant to statute or a separate common law action for damages.<sup>3</sup>

Such statutes, being highly penal in nature,<sup>4</sup> must be strictly construed<sup>5</sup> in favor of the execution officer.<sup>6</sup>

Amercement has been considered to be so harsh a remedy that very slight circumstances are held to exempt officers from the operation of such statutes,<sup>7</sup> and before a sheriff can be subjected to penalties under an amercement statute, for failing to properly execute on a judgment debtor's property, it must be proven that the sheriff's alleged neglect falls not only within the letter but also the spirit of the statute.<sup>8</sup> Thus, before an officer may be amerced for failure to return an execution, it must clearly appear

that a valid judgment has been rendered, the judgment has not been satisfied, the judgment creditor (or someone acting for him or her) has filed a praecipe or execution, an execution has been issued and delivered to the officer for service and return, and the officer has failed to serve or return the same as required by law.<sup>9</sup> Nor will a sheriff be subject to amercement for a failure to execute a writ of possession for personal property where the sheriff shows a valid and complete defense, such as the common law prohibition on the use of forcible entry to execute such a writ,<sup>10</sup> or the absence of suitable property within the county upon which to levy the writ.<sup>11</sup>

**Observation:**

One court has stated that amercement may be remedial rather than penal. Nonetheless, a sheriff is not liable to amercement until he or she has disobeyed positive, reasonable, and lawful directions. The court commented that the difficult, distasteful aspects of executing writs demand that sheriffs be dealt with fairly with an eye to the practicalities of their job. The court's reluctance to amerce a sheriff is only overcome by the convincing proof that the sheriff owed and breached a duty to the plaintiff to make the levies as requested.<sup>12</sup>

Because the right to demand judgment in amercement is not based on equitable grounds, the courts are bound to hold the party claiming the remedy to a strict observance of the requirements of the statute.<sup>13</sup> Where amercement of a sheriff is required to be by motion in the cause in which the judgment had been recovered, bringing an action against the sheriff and his or her surety is not sufficient compliance with the statutory requirement for amercement.<sup>14</sup> If an execution fails to conform to the judgment rendered, the sheriff may likewise be relieved from the penalty or from the judgment of amercement.<sup>15</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

**Footnotes**

- 1 [Flowers v. Gray](#), 170 Kan. 266, 225 P.2d 94 (1950); [Vitale v. Hotel California, Inc.](#), 184 N.J. Super. 512, 446 A.2d 880 (Law Div. 1982), judgment aff'd, 187 N.J. Super. 464, 455 A.2d 508 (App. Div. 1982); [Fletcher v. Royse](#), 1953 OK 153, 208 Okla. 467, 257 P.2d 507 (1953); [Sherman v. Upton, Inc.](#), 90 S.D. 467, 242 N.W.2d 666, 19 U.C.C. Rep. Serv. 694 (1976).
- 2 [Flowers v. Gray](#), 170 Kan. 266, 225 P.2d 94 (1950); [Eggeman v. Western Nat. Bank](#), 596 P.2d 318 (Wyo. 1979).  
Amercement of a sheriff was appropriate for improperly executing a judgment upon a horse located within the sheriff's jurisdiction where the sheriff usurped the statutory function of the jury when he determined that the horse did not belong to the defendant and released it to the person claiming ownership. [Ryan v. Carter](#), 67 Ohio St. 3d 568, 1993-Ohio-168, 621 N.E.2d 399 (1993).
- 3 [Takacs v. Baldwin](#), 106 Ohio App. 3d 196, 665 N.E.2d 736 (6th Dist. Huron County 1995).
- 4 [Takacs v. Baldwin](#), 106 Ohio App. 3d 196, 665 N.E.2d 736 (6th Dist. Huron County 1995).
- 5 [Kirkpatrick v. Ault](#), 174 Kan. 701, 258 P.2d 262 (1953); [Stein v. Scanlan](#), 1912 OK 655, 34 Okla. 801, 127 P. 483 (1912); [Sherman v. Upton, Inc.](#), 90 S.D. 467, 242 N.W.2d 666, 19 U.C.C. Rep. Serv. 694 (1976).
- 6 [Takacs v. Baldwin](#), 106 Ohio App. 3d 196, 665 N.E.2d 736 (6th Dist. Huron County 1995).
- 7 [Sherman v. Upton, Inc.](#), 90 S.D. 467, 242 N.W.2d 666, 19 U.C.C. Rep. Serv. 694 (1976).
- 8 [Takacs v. Baldwin](#), 106 Ohio App. 3d 196, 665 N.E.2d 736 (6th Dist. Huron County 1995).

- 9 Stein v. Scanlan, 1912 OK 655, 34 Okla. 801, 127 P. 483 (1912).  
10 Red House Furniture Co. v. Smith, 310 N.C. 617, 313 S.E.2d 569 (1984).  
11 Sherman v. Upton, Inc., 90 S.D. 467, 242 N.W.2d 666, 19 U.C.C. Rep. Serv. 694 (1976).  
12 Vitale v. Hotel California, Inc., 184 N.J. Super. 512, 446 A.2d 880 (Law Div. 1982), judgment aff'd, 187 N.J. Super. 464, 455 A.2d 508 (App. Div. 1982).  
13 Stein v. Scanlan, 1912 OK 655, 34 Okla. 801, 127 P. 483 (1912); Sherman v. Upton, Inc., 90 S.D. 467, 242 N.W.2d 666, 19 U.C.C. Rep. Serv. 694 (1976).  
14 Crown Cork & Seal Co. v. Barnes, 153 N.W.2d 89 (N.D. 1967).  
15 Stein v. Scanlan, 1912 OK 655, 34 Okla. 801, 127 P. 483 (1912).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 114

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### C. Forms of Action

##### 2. Amercement

### § 114. Amount of penalty

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  125(2)

#### Forms

Forms relating to writ of amercement penalties, see Am. Jur. Pleading and Practice Forms, Sheriffs, Police, and Constables  
[\[Westlaw®\(r\) Search Query\]](#)

Under some statutes, the amount of the amercement penalty for the sheriff's refusal or neglect to execute any writ of execution, or to return any writ to the proper court on or before the return day, is the sum of the debt, damages, and costs, with a certain percent thereon to and for the use of the plaintiff or defendant, as the case may be.<sup>1</sup>

Once a judgment creditor has made a case under an amercement statute, based on a sheriff's failure to properly execute on a judgment debtor's property, amercement penalties must necessarily be adjudged against the sheriff unconditionally and without exercise of discretion by the court.<sup>2</sup>

A person requesting service should advise a sheriff of suggested times that service may be accomplished when that person is aware that the normal manner of service may not be effective. If additional attempts to serve process are required as a result of the plaintiff's failure to so advise the sheriff, additional mileage costs may be properly imposed and amercement may not be appropriate, but if the plaintiff advises the sheriff of specific times of service and the sheriff does not follow positive, reasonable, lawful directions, amercement may be imposed.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Stein v. Scanlan](#), 1912 OK 655, 34 Okla. 801, 127 P. 483 (1912).  
As to damages recoverable for officer's failure to execute process, generally, see § 146.
- 2 [Takacs v. Baldwin](#), 106 Ohio App. 3d 196, 665 N.E.2d 736 (6th Dist. Huron County 1995).
- 3 [Sears, Roebuck and Co. v. Braney](#), 265 N.J. Super. 362, 627 A.2d 662 (App. Div. 1993) (additional mileage charges that a plaintiff may have incurred to effectuate service should have been amerced a sheriff where the sheriff, contrary to normal policy, made all five attempts at service during the day between 10:00 a.m. and 3:00 p.m.).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 115

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### C. Forms of Action

##### 2. Amercement

### § 115. Burden of proof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  125(2)

Because a public officer such as a sheriff is presumed to have acted properly, the plaintiff bears the burden of proof on an amercement motion<sup>1</sup> by establishing some default or neglect of duty.<sup>2</sup> In an amercement proceeding, the plaintiff must show that the officer's conduct has deprived him or her of a substantial benefit to which the plaintiff was entitled under the writ and that were it not for the officer's conduct, the plaintiff would have received such benefit through the execution. However, the plaintiff is not bound to prove the value of the property subject to levy.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Vitale v. Hotel California, Inc.](#), 184 N.J. Super. 512, 446 A.2d 880 (Law Div. 1982), judgment aff'd, 187 N.J. Super. 464, 455 A.2d 508 (App. Div. 1982).  
As to presumption that officer has done his or her duty, generally, see [§ 134](#).
- <sup>2</sup> [Sears, Roebuck and Co. v. Braney](#), 265 N.J. Super. 362, 627 A.2d 662 (App. Div. 1993).
- <sup>3</sup> [Vitale v. Hotel California, Inc.](#), 184 N.J. Super. 512, 446 A.2d 880 (Law Div. 1982), judgment aff'd, 187 N.J. Super. 464, 455 A.2d 508 (App. Div. 1982).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 116

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### C. Forms of Action

##### 2. Amercement

## § 116. Defenses

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  125(2)

A sheriff may defend a lawsuit brought against him or her to recover penalties under an amercement statute, based on the sheriff's failure to execute on a judgment debtor's property, by demonstrating that he or she acted in good faith.<sup>1</sup>

### Definition:

"Good faith," such as may insulate a sheriff from liability under an amercement statute, is an intangible and abstract quality which encompasses, among other things, an honest belief, the absence of malice, and absence of design to defraud or to seek unconscionable advantage. It connotes honesty of intention and freedom from knowledge of circumstances which would put a party acting in good faith on inquiry.<sup>2</sup>

Lack of injury to a claimant is not a sufficient defense to a statutory amercement action arising out of a sheriff's alleged failure to execute a writ.<sup>3</sup>

Footnotes

- 1 [Takacs v. Baldwin, 106 Ohio App. 3d 196, 665 N.E.2d 736 \(6th Dist. Huron County 1995\).](#)  
A writ of execution sufficiently described the property that was subject to seizure, so that the judgment creditors were not responsible for a sheriff's failure to execute and were not barred, on that basis, from seeking penalties under an amercement statute, where the writ specifically described the property of the debtor-wife with attached documents of title, and advised the sheriff not to seize items set forth in a bankruptcy petition filed in the debtor-husband's individual Chapter 13 case. [Takacs v. Baldwin, 106 Ohio App. 3d 196, 665 N.E.2d 736 \(6th Dist. Huron County 1995\).](#)
- 2 [Takacs v. Baldwin, 106 Ohio App. 3d 196, 665 N.E.2d 736 \(6th Dist. Huron County 1995\).](#)
- 3 [Rodgers v. Rodgers, 74 Ohio App. 3d 580, 599 N.E.2d 751 \(4th Dist. Pike County 1991\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables X D Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

#### D. Statutes of Limitations

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#) 🔑 133

### A.L.R. Library

A.L.R. Index, Constables

A.L.R. Index, Deputies

A.L.R. Index, Marshals

A.L.R. Index, Police and Law Enforcement Officers

A.L.R. Index, Public Officers and Employees

A.L.R. Index, Sheriffs

West's A.L.R. Digest, [Sheriffs and Constables](#) 🔑 133

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 117

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### D. Statutes of Limitations

## § 117. Statutes of limitations, generally; time to sue

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  133

### Trial Strategy

[Solving Statutes of Limitation Problems](#), 4 Am. Jur. Trials 441 § 45 (Suit on sheriff's surety bond)

A number of states have statutes of limitations specifically governing actions brought against a sheriff or other peace officer on the basis of the officer's conduct in the performance of his or her official duties.<sup>1</sup> In other cases, the time within which an action against a peace officer must be brought is governed by a statute of limitations applicable to other public officers as well.<sup>2</sup> The term "sheriff" in such statutes includes deputies.<sup>3</sup>

A statute of limitations regarding the official acts of a peace officer is not applicable to actions brought against the officer for conduct amounting only to personal acts.<sup>4</sup>

Under some circumstances, different statutes of limitation may apply to the same conduct, and an action against a peace officer which would be time-barred because of the nature of the alleged misconduct may be preserved because the statute of limitations applicable to public officers generally or to peace officers specifically for breach of their official duties still has time to run.<sup>5</sup>

In regard to an attachment, the statute of limitations generally runs from the date when the return of the writ is due.<sup>6</sup>

Footnotes

- 1 [Brown v. U.S.](#), 486 F.2d 284 (8th Cir. 1973); [Allen v. Fidelity and Deposit Co. of Maryland](#), 515 F. Supp. 1185 (D.S.C. 1981), [aff'd](#), 694 F.2d 716 (4th Cir. 1982); [Bailey v. Clausen](#), 192 Colo. 297, 557 P.2d 1207 (1976); [Dixon v. Seymour](#), 62 A.D.2d 444, 405 N.Y.S.2d 320 (3d Dep't 1978).  
One-year statute of limitations applied to an action against a sheriff arising out of an act in his or her official capacity or omission of official duty even when the alleged misconduct was malicious. [Jemison v. Crichlow](#), 139 A.D.2d 332, 531 N.Y.S.2d 919 (2d Dep't 1988), [order aff'd](#), 74 N.Y.2d 726, 544 N.Y.S.2d 813, 543 N.E.2d 78 (1989).  
A prescription period of one year for delictual actions applied to a claim for personal injuries allegedly caused by arresting officers at a sheriff's department rather than a two-year prescription period for suits against a sheriff for acts of malfeasance. [Restrepo v. Fortunato](#), 556 So. 2d 1362 (La. Ct. App. 5th Cir. 1990), [writ denied](#), 560 So. 2d 11 (La. 1990).  
A one-year limitations period applicable to any liability incurred as a result of an act performed in a sheriff's official capacity applied regardless of whether the act was one for which a bond had been secured. [Cain v. Guzman](#), 761 P.2d 295 (Colo. App. 1988).
- 2 [Reuben v. O'Brien](#), 299 Pa. Super. 372, 445 A.2d 801 (1982) (statute of limitations applicable to any action against "any officer of any government unit" was applicable to suits against constables).  
A two-year limitations period applied to a claim that a sheriff and county extorted a bail bondsman's personal property by collecting preconviction bail bond fees and "affidavit to go off bail" fees. [Bowles v. Reed](#), 913 S.W.2d 652 (Tex. App. Waco 1995), [writ denied](#), (May 10, 1996).
- 3 [Bailey v. Clausen](#), 192 Colo. 297, 557 P.2d 1207 (1976); [Passonno v. Rensselaer County](#), 87 A.D.2d 693, 448 N.Y.S.2d 867 (3d Dep't 1982).
- 4 [Bailey v. Clausen](#), 192 Colo. 297, 557 P.2d 1207 (1976); [Cornwall v. Larsen](#), 571 P.2d 925 (Utah 1977).  
Where a pedestrian set forth a claim for relief under the state no-fault act, the three-year statute of limitations contained in the act, rather than the one-year statute of limitations regarding actions against sheriffs, governed a negligence action against the sheriff's department arising from an alleged automobile accident with a pedestrian involving a departmental automobile. [Dawson v. Reider](#), 872 P.2d 212 (Colo. 1994).  
A one-year statute of limitations did not apply to an action against a deputy sheriff for failure to use reasonable care in the operation of his motor vehicle since the duty imposed upon the deputy sheriff to use reasonable care was not a duty imposed upon him by his office but, instead, was a duty imposed upon everyone who operates a motor vehicle. [Eidman v. County of Monroe](#), 177 A.D.2d 996, 578 N.Y.S.2d 17 (4th Dep't 1991).
- 5 [State ex rel. Williams v. Adams](#), 288 N.C. 501, 219 S.E.2d 198 (1975).
- 6 [Johnson v. Beattie](#), 88 Vt. 512, 93 A. 250 (1915).  
The statute of limitations governing an action brought by a party whose property was the subject of a writ of execution against a sheriff, claiming breach of the sheriff's duty as a bailee, was a two-year statute for injury to property rather than a four-year statute for recovery of personal property or a six-year statute governing oral contracts. [N & D, Inc. v. Harrod](#), 73 Ohio App. 3d 299, 596 N.E.2d 1136 (3d Dist. Allen County 1991).

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 118

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### D. Statutes of Limitations

### § 118. Actions based upon breach of duty in connection with levy upon or sale of property under execution or attachment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  133

A former property owners' suit against a sheriff, alleging tortious conduct arising from the levy and execution sale of real estate, arises in tort and thus is subject to a statute of limitations pertaining to tort actions.<sup>1</sup>

An execution debtor's action against a deputy sheriff for damages caused by negligence in conducting a sale of levied property will be timely, whether the action is governed by the statute of limitations for an action against a sheriff for civil liability based on acts performed in his or her official capacity or under the limitations for general negligence actions.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Ryder v. Ward](#), 933 S.W.2d 428 (Mo. Ct. App. W.D. 1996).

<sup>2</sup> [Lang v. Barrios](#), 472 N.W.2d 464 (N.D. 1991).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 119

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### D. Statutes of Limitations

## § 119. Breach of duty in regard to an attachment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  133

As to a sheriff's failure to turn over the proceeds of the property collected in attachment, under a statute providing that "the proceeds of such sale shall be paid into court or otherwise disposed of as the court or judge may order," the statute of limitations does not begin to run in favor of the sheriff until he or she disobeys an order of the court or of the judge.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

1

[State, to Use of Blacker, v. O'Neill, 114 Mo. App. 611, 90 S.W. 410 \(1905\).](#)

As to sheriff's liability in connection with his or her sale of goods under process, generally, see [§ 55](#).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 120

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### D. Statutes of Limitations

## § 120. Breach of duty in execution

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  133

According to some authority, an action against a sheriff does not lie for money made by him or her under an execution until a demand is made therefor,<sup>1</sup> and the statute of limitations does not begin to run in his or her favor until such demand is made.<sup>2</sup>

As to causes of action based upon the sheriff's negligence in failing to collect money under an execution, the statute of limitations begins to run from the time of the failure to collect.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [§ 102.](#)
- <sup>2</sup> [National Automobile & Cas. Ins. Co. v. Pitchess](#), 35 Cal. App. 3d 62, 110 Cal. Rptr. 649 (2d Dist. 1973) (abrogated on other grounds by, [City of Stockton v. Superior Court](#), 42 Cal. 4th 730, 68 Cal. Rptr. 3d 295, 171 P.3d 20 (2007)).
- <sup>3</sup> [Lambert v. McKenzie](#), 135 Cal. 100, 67 P. 6 (1901) (overruled in part on other grounds by, [Wennerholm v. Stanford University School of Medicine](#), 20 Cal. 2d 713, 128 P.2d 522, 141 A.L.R. 1358 (1942)).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 121

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### D. Statutes of Limitations

## § 121. Wrongful seizure of goods of third party

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  133

As a general rule, where the property of a third person has been wrongfully seized under process or court order, the statute of limitations governing an action brought against a sheriff or constable for the wrongful seizure commences to run at the time of such seizure.<sup>1</sup> However, the limitation period has also been found to run from the time that the rights of the parties are finally determined.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [Industrial Chrome Plating Co. v. North](#), 175 Or. 351, 153 P.2d 835, 156 A.L.R. 250 (1944).  
As to sheriff's civil liability for seizure of goods of third party, generally, see § 49.
- 2 [Hernandez v. Harson](#), 237 La. 389, 111 So. 2d 320 (1958).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables X E Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### E. Pleading

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#) 🔑 137(.5) to 137(2)

### A.L.R. Library

A.L.R. Index, Constables  
A.L.R. Index, Deputies  
A.L.R. Index, Marshals  
A.L.R. Index, Police and Law Enforcement Officers  
A.L.R. Index, Public Officers and Employees  
A.L.R. Index, Sheriffs  
West's A.L.R. Digest, [Sheriffs and Constables](#) 🔑 137(.5) to 137(2)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 122

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### E. Pleading

##### 1. Complaint

## § 122. Complaint, generally; sufficiency of allegations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  137(.5), 137(1)

### Forms

Forms regarding action against sheriffs for failure to perform duties, see Am. Jur. Pleading and Practice Forms, Sheriffs, Police, and Constables [[Westlaw®\(r\) Search Query](#)]

Where notice pleading is not allowed, the plaintiff must avoid allegations in his or her complaint which in form are mere conclusions of law.<sup>1</sup> If the plaintiff does not allege facts which under the rules of substantive law are sufficient to show liability on the part of the officer, the pleading will be open to attack.<sup>2</sup> As in any other case, however, after a verdict or judgment, the pleadings in an action against a sheriff or other peace officer are liberally construed to sustain the judgment, and formal defects in the pleadings are deemed cured by such judgment.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

<sup>1</sup> [Jones v. Van Bever](#), 164 Ky. 80, 174 S.W. 795 (1915) (overruled in part on other grounds by, [Maryland Cas. Co. v. McCormack](#), 488 S.W.2d 347, 82 A.L.R.3d 857 (Ky. 1972)).

- 2                    [St. Louis, I.M. & S. Ry. Co. v. Andrews](#), 102 Ark. 175, 143 S.W. 1084 (1912); [Trantham v. Lane](#), 127 N.C. App. 304, 488 S.E.2d 625 (1997) (the father, aunt, and uncle of a child failed to state a negligence claim against a deputy sheriff in his individual capacity for his assistance of the mother in regaining custody of the child, despite an indication in the caption of the complaint that the deputy was being sued in his individual capacity, where the overall tenor of the complaint focused on the deputy's official duties as a law enforcement officer for which he was entitled to immunity, and the complaint did not advance allegations against the deputy separate from his official duties).
- A complaint under the civil rights statute ([42 U.S.C.A. § 1983](#)) alleging that an unnamed police officer drove a wife's estranged husband to her home and ordered the wife to admit the husband, who subsequently assaulted the wife, was not deficient in failing to detail the defendant officer's specific role in her complaint when the information related to that role was in the exclusive control of the county and county police officer defendants. [Pullium v. Ceresini](#), 221 F. Supp. 2d 600 (D. Md. 2002).
- A complaint which alleged that a sheriff failed to serve a subpoena issued by the trial court and that as a consequence, the plaintiff's rights to a fair hearing were prejudiced, adequately stated a claim under a statute which imposed upon the sheriff a duty to serve mesne process which could be served in the exercise of due diligence where, although allegations that a duty and breach thereof in the language of the statute would have been more clear, the present allegations provided fair notice to the sheriff of the plaintiff's claim and grounds upon which the claim rested. [Beavers v. Hadden](#), 528 So. 2d 333 (Ala. Civ. App. 1988).
- 3                    [Winstead v. Hicks](#), 135 Ky. 154, 121 S.W. 1018 (1909).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 123

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### E. Pleading

##### 1. Complaint

### § 123. Action against sheriff for wrongful acts of his or her deputy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [137\(.5\)](#), [137\(1\)](#)

To require that the sheriff respond to allegations that he or she is responsible for the wrongful acts of the sheriff's deputy,<sup>1</sup> the complaint must allege that the deputy's act was committed while the deputy was performing an official duty and must have resulted from the wrongful manner in which such official duty was performed.<sup>2</sup>

Where the statute makes the sheriff liable only for the neglect or omissions of the deputies, the complaint must, to state a cause of action against the sheriff, allege that the damage complained of resulted from the deputy's neglect or omissions rather than alleging the deputy's intentional or wanton misconduct.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> As to civil liability of sheriff for acts of his or her deputy, generally, see §§ [56](#) to [62](#).
- <sup>2</sup> [Ober v. State, Through Louisiana Dept. of Corrections](#), 424 So. 2d 533 (La. Ct. App. 5th Cir. 1982); [Poole v. Brunt](#), 338 So. 2d 991 (Miss. 1976).  
A citizen did not sufficiently allege that a police officers' superintendent was liable under [42 U.S.C.A. § 1983](#) for the police officers' malicious prosecution of the citizen under the theory of supervisory liability where the citizen's complaint outlined the legal standard of supervisory liability and alleged that the supervisor failed to train and supervise the officers but did not establish that the superintendent had notice of the officers' purported violation of the citizen's constitutional rights or connect the superintendent's conduct to the officers' actions. [Rodriguez-Esteras v. Solivan-Diaz](#), 266 F. Supp. 2d 270 (D.P.R. 2003).

Allegations that a sheriff's deputies failed to take a bond jumper into protective custody and thereby protect him from bounty hunters who beat him, despite his pleas for help, even though they were aware of injuries he had suffered at the hands of bounty hunters, and that the sheriff "failed to prevent the wrongful acts of his deputies," were sufficient to state a claim for willful and wanton conduct against the deputies and, by operation of the statutorily imposed respondeat superior liability, against the sheriff. [Peterson v. Arapahoe County Sheriff](#), 72 P.3d 440 (Colo. App. 2003).

3

[J. P. Miller Artesian Well Co. v. Cook County](#), 39 Ill. App. 3d 1020, 352 N.E.2d 372 (1st Dist. 1976).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 124

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### E. Pleading

##### 1. Complaint

### § 124. Action against sheriff for failure to execute

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  137(.5), 137(1)

#### Trial Strategy

[Sheriff's Negligent Failure to Attach Property](#), 17 Am. Jur. Proof of Facts 2d 715

A plaintiff seeking execution must plead a prima facie case against a sheriff for failure to execute by pleading that:

- (1) execution based on a valid judgment was issued and delivered to the sheriff;
- (2) the debtor had some property subject to execution, that is, ownership of nonexempt assets, in the county when the sheriff had the writ;
- (3) the sheriff failed to seize the nonexempt property; and
- (4) the judgment remains unpaid.<sup>1</sup>

After the plaintiff in execution sets forth a prima facie case for failure to execute, the sheriff may disprove an element thereof, for example, the debtor's ownership of assets, and at that point, the burden shifts to the sheriff to plead and prove one of the defenses or mitigation,<sup>2</sup> such as proof that the fair market value of the property was less than the underlying judgment.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Kuo Kung Ko v. Pin Ya Chin](#), 934 S.W.2d 839 (Tex. App. Houston 14th Dist. 1996); [Hickey v. Couchman](#), 797 S.W.2d 103 (Tex. App. Corpus Christi 1990), writ denied, (Feb. 13, 1991).
- 2 [Kuo Kung Ko v. Pin Ya Chin](#), 934 S.W.2d 839 (Tex. App. Houston 14th Dist. 1996); [Hickey v. Couchman](#), 797 S.W.2d 103 (Tex. App. Corpus Christi 1990), writ denied, (Feb. 13, 1991).  
As to burden of proof for failure to execute, see § 137.
- 3 [Kuo Kung Ko v. Pin Ya Chin](#), 934 S.W.2d 839 (Tex. App. Houston 14th Dist. 1996).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 125

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### E. Pleading

##### 1. Complaint

## § 125. Action on officer's bond

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [137\(.5\)](#), [137\(1\)](#)

### Forms

Forms to recover judgments against officer as surety, see Am. Jur. Pleading and Practice Forms, Sheriffs, Police, and Constables [\[Westlaw®\(r\) Search Query\]](#)

It is not enough, in an action on an officer's bond, for the pleader, generally, to state that the officer is acting "by virtue of or under color of his office," or that the acts are of such a character as are authorized by law, or that such acts constitute his or her official duty.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- <sup>1</sup> [People v. Beach](#), 49 Colo. 516, 113 P. 513 (1911).  
A plaintiff failed to state a cause of action on a sheriff's official bond for wrongful-death of the plaintiff's husband based on an allegedly negligent early release of an inmate who killed the husband during a robbery, where the plaintiff made no allegation that the sheriff intentionally misbehaved in the performance of his

duties, and the public duty doctrine barred the claim that the sheriff acted negligently in the performance of his duties. [Stafford v. Barker](#), 129 N.C. App. 576, 502 S.E.2d 1 (1998).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 126

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### E. Pleading

##### 2. Pleas or Answer

### § 126. Pleas or answer, generally; need to specially plead certain defenses

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  137(2)

An answer will be deemed timely where the delay in service was relatively brief, attributable in part to a belief that the extension had been granted, no prejudice or willful inaction is shown, and the moving papers include a verified answer which demonstrates a meritorious defense.<sup>1</sup>

An officer must specially plead that he or she acted by virtue of legal process, as an officer, to preserve that defense as a justification in trespass.<sup>2</sup> In addition, the officer must both plead and prove any affirmative defenses to certain charges.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Bardi v. Warren County Sheriff's Dept.](#), 194 A.D.2d 21, 603 N.Y.S.2d 90 (3d Dep't 1993).
- <sup>2</sup> [MacLaren v. Kramer](#), 26 N.D. 244, 144 N.W. 85 (1913).
- <sup>3</sup> [Mooney v. Producers Grain Corp.](#), 531 S.W.2d 699 (Tex. Civ. App. Amarillo 1975) (exercise of due diligence in attempting to levy an execution is an affirmative defense which must be both pleaded and proved). Although a constable did not plead official immunity by name, his pleading, by which he claimed every immunity he was entitled to claim as a public officer, gave fair notice to the plaintiff that the constable was pleading official immunity as an affirmative defense. [Carpenter v. Barner](#), 797 S.W.2d 99 (Tex. App. Waco 1990), writ denied, (May 30, 1991).

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 127

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### E. Pleading

##### 2. Pleas or Answer

## § 127. Qualified immunity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  137(2)

Qualified immunity is an affirmative defense to an action brought under the federal civil rights statute<sup>1</sup> for a deprivation of civil rights that may be waived.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> 42 U.S.C.A. § 1983.

<sup>2</sup> [Bogle v. McClure](#), 332 F.3d 1347 (11th Cir. 2003).

An arrestee did not waive his objection to a qualified immunity defense raised by an officer on appeal, in an action for excessive force under [42 U.S.C.A. § 1983](#), even though the arrestee did not seek judgment as a matter of law on the qualified immunity issue or a new trial owing special jury verdict in favor of the officer on the qualified immunity issue, where the jury made an arguably inconsistent determination in a special verdict that the officer used excessive force, so that enforcing the qualified immunity verdict could unjustly deprive the arrestee of the right to recover for a violation of constitutional rights. [Stephenson v. Doe](#), 332 F.3d 68, 56 Fed. R. Serv. 3d 619 (2d Cir. 2003).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables X F Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

#### F. Evidence


[Topic Summary](#) | [Correlation Table](#)

### Research References

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  138(.5) to 138(3)

#### A.L.R. Library

A.L.R. Index, Constables  
A.L.R. Index, Deputies  
A.L.R. Index, Evidence  
A.L.R. Index, Marshals  
A.L.R. Index, Police and Law Enforcement Officers  
A.L.R. Index, Public Officers and Employees  
A.L.R. Index, Sheriffs  
West's A.L.R. Digest, [Sheriffs and Constables](#)  138(.5) to 138(3)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 128

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### F. Evidence

##### 1. Admissibility; Sufficiency

### § 128. Admissibility of evidence, generally; requirement that evidence be relevant and competent

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [138\(.5\)](#), [138\(2\)](#)

The general rules of evidence are applicable to actions against sheriffs, constables, marshals, or other such officers. When the issue is joined upon any material allegation of claim or defense, the burden of proof ordinarily rests on the party having the affirmative of such issue although in the discharge of this burden the party may be aided by presumptions.<sup>1</sup> In the discharge of that burden, the party upon whom it rests may introduce any evidence relevant to the issue joined, if such evidence is competent under the ordinary rules of evidence, and his or her adversary may introduce any competent proof tending to refute the plaintiff's evidence.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> §§ 134 to 142.

<sup>2</sup> [Wipperman Mercantile Co. v. Robbins](#), 23 N.D. 208, 135 N.W. 785 (1912).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 129

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### F. Evidence

##### 1. Admissibility; Sufficiency

## § 129. Actions relating to seizure of property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  138(.5), 138(2)

Evidence of a custom followed by sheriffs in the care of property levied on, which property is too heavy to be moved readily, is inadmissible in an action against a sheriff for failure to place a watchperson over the property levied on by the sheriff where there is nothing to show that the custom relied on was followed in the instant case.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

<sup>1</sup> [State, to Use of Henderson, v. Clark](#), 41 Del. 246, 20 A.2d 127, 138 A.L.R. 704 (1941).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 130

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### X. Actions; Practice and Procedure

### F. Evidence

### 1. Admissibility; Sufficiency

## § 130. Return as evidence; force and effect

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [138\(.5\)](#), [138\(2\)](#)

Generally, the return of a sheriff or his or her deputy is to be taken as true, and in most cases, incontrovertibly so.<sup>1</sup> The return is not conclusive as to the identity of the purchaser where a sheriff's return states that the sale was made to one person, and his or her certificate of sale named another person as the purchaser.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- <sup>1</sup> As to civil liability of sheriff for making false return, generally, see [§ 54](#).  
<sup>2</sup> [Commercial Bank & Trust Co. v. Jordan](#), 85 Mont. 375, 278 P. 832, 65 A.L.R. 968 (1929).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 131

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### F. Evidence

##### 1. Admissibility; Sufficiency

### § 131. Testimony to amplify or explain return which has been offered in evidence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [138\(.5\)](#), [138\(2\)](#)

Under a statute providing that if a writ of execution is not executed, or is executed in part only, the reason must be stated in the return, evidence of reasons in addition to that stated in the return why the sale did not take place is admissible in an action against a sheriff and the surety on his or her bond brought for damages alleged to have been sustained in consequence of the sheriff's failure to sell the property levied upon.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Smith v. Hanson](#), 70 N.D. 241, 293 N.W. 551, 129 A.L.R. 1356 (1940).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 132

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### F. Evidence

##### 1. Admissibility; Sufficiency

## § 132. Evidence admissible in action for wrongful levy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  138(.5), 138(2)

Unless the evidence offered in an action for wrongful levy is material to the issues in the action, it should be excluded.<sup>1</sup>

In an action for damages by a third person claiming title to property levied on by an officer, the execution is no justification of the levy made and is not admissible in evidence for such purpose.<sup>2</sup>

In an action against an attaching officer for a wrongful levy or sale brought by one claiming title to property seized under process, a judgment for the claimant in a summarily tried proceeding as to title is inadmissible.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [State, to Use of Henderson, v. Clark](#), 41 Del. 246, 20 A.2d 127, 138 A.L.R. 704 (1941) (in determining the liability of a sheriff for failing to place a watchman over property levied on by him which is too heavy to be readily moved, it is immaterial that the defendants, the owners of the property, had left it where it was levied on, unguarded and unprotected).
- <sup>2</sup> [McCune v. Peters](#), 54 Misc. 165, 105 N.Y.S. 896 (County Ct. 1907).
- <sup>3</sup> [Smith v. White](#), 63 W. Va. 472, 60 S.E. 404 (1908).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 133

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### F. Evidence

##### 1. Admissibility; Sufficiency

### § 133. Sufficiency of evidence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  138(3)

Evidence supporting a finding that a deputy willfully failed to execute on a debtor's assets will support a finding that the sheriff failed to exercise due diligence in execution on a motion by a plaintiff in execution for damages for the sheriff's failure to execute.<sup>1</sup>

Evidence that a deputy actually saw the assets and verified that a judgment debtor owned some interest in them is sufficient to support a finding that some assets subject to an execution existed at the time a sheriff had a writ of execution on motion by a plaintiff in execution for damages for the sheriff's failure to execute.<sup>2</sup>

Evidence, including the testimony of the judgment creditor's attorney, has been held to support a finding that the constable made a false return when he stated in the writ of execution that no further action would be taken pursuant to writ at the request of the creditor's attorney in the cause.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Hickey v. Couchman](#), 797 S.W.2d 103 (Tex. App. Corpus Christi 1990), writ denied, (Feb. 13, 1991).
- <sup>2</sup> [Hickey v. Couchman](#), 797 S.W.2d 103 (Tex. App. Corpus Christi 1990), writ denied, (Feb. 13, 1991).
- <sup>3</sup> [Dallas County Constable Precinct No. 5 v. Garden City Boxing Club, Inc.](#), 219 S.W.3d 613 (Tex. App. Dallas 2007).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 134

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### F. Evidence

#### 2. Presumptions and Burden of Proof

### § 134. Presumptions and burden of proof, generally; presumption that sheriff discharged duty faithfully

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  138(1)

Since a sheriff is a sworn officer of the law, the presumption always arises that as an officer who is required to do a particular thing, the sheriff has discharged his or her duty faithfully unless the contrary is shown.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Kirkpatrick v. Ault](#), 174 Kan. 701, 258 P.2d 262 (1953).  
A commercial tenant failed to overcome the presumption of regularity, as required to support a claim against the marshal who effectuated an eviction with a vacated warrant, absent a showing that the marshal had knowingly or negligently executed an invalid warrant. [Rodriguez v. 1414-1422 Ogden Avenue Realty Corp.](#), 304 A.D.2d 400, 758 N.Y.S.2d 43 (1st Dep't 2003).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 135

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### F. Evidence

#### 2. Presumptions and Burden of Proof

### § 135. Release of property from attachment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  138(1)

In an action for releasing personal property from an attachment without first obtaining the bond prescribed by statute, the burden is on the plaintiff to show the negligent act and also to show damages.<sup>1</sup> Where a sheriff releases a plaintiff's attachment without his or her consent, the burden of justifying the sheriff's action by showing that the debtor in the attachment suit had no leviable interest in the property is upon him or her.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Isenman v. Burnell](#), 125 Me. 57, 130 A. 868 (1925).

<sup>2</sup> [Whitney v. Wagener](#), 84 Minn. 211, 87 N.W. 602 (1901).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 136

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### F. Evidence

#### 2. Presumptions and Burden of Proof

### § 136. Torts of deputy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  138(1)

In an action against a deputy for trespass in executing a search warrant directed to the deputy, which is regular upon its face, and issued by a justice of the peace upon a sworn complaint, the burden is not upon the defendant to prove that the facts set out in the complaint upon which the warrant was issued are true even though such officer swore to the complaint.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Knisley v. Ham](#), 1913 OK 630, 39 Okla. 623, 136 P. 427 (1913).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 137

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### F. Evidence

#### 2. Presumptions and Burden of Proof

### § 137. Failure to execute process

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  138(1)

Since the prima facie presumption is that the officer has performed his or her duty,<sup>1</sup> the burden is on the plaintiff to prove that the officer has neglected to seize property which could have been levied upon.<sup>2</sup> It is incumbent on the plaintiff to prove prima facie the attachment debtor's ownership of the property or that the debtor had some interest in the property or such possession as to raise a presumption of ownership.<sup>3</sup>

In some jurisdictions, a distinction is made between mesne (prejudgment) and final process, and in a suit for failure to execute an attachment or other mesne process, there is no presumption of damages, and the burden rests upon the plaintiff to prove actual damages while, as to final process, a presumption of damages in the amount of the execution exists and the burden rests on the officer to show lack of injury for failure to levy or to show matters in mitigation of damages.<sup>4</sup>

When the plaintiff has made out a prima facie case in his or her own favor, the burden shifts to the officer to justify his or her failure to make the levy.<sup>5</sup> Thus, the burden is on the officer to establish that the property was exempt from execution;<sup>6</sup> that the value of the assets subject to execution was less than the amount of the plaintiff's underlying judgment;<sup>7</sup> or that the officer's failure to execute process was due to acts or instructions of the plaintiff, his or her agent, or attorney.<sup>8</sup> However, the officer does not have the burden to prove that the properties sought for execution did not exist.<sup>9</sup> The plaintiff need not prove any fact negating justification.<sup>10</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1                   § 134.
- 2                   Kirkpatrick v. Ault, 174 Kan. 701, 258 P.2d 262 (1953).
- 3                   Phelps, Dodge & Palmer Co. v. Skinner, 63 Kan. 364, 65 P. 667 (1901).
- 4                   Beck & Gregg Hardware Co. v. Knight, 121 Ga. 287, 48 S.E. 930 (1904).
- 5                   First International Bank of Portal v. Lee, 19 N.D. 10, 120 N.W. 1093 (1909).
- 6                   First International Bank of Portal v. Lee, 19 N.D. 10, 120 N.W. 1093 (1909).  
A sheriff's deputy did not have the burden of proof, on a motion by the plaintiff in execution for damages for the sheriff's failure to execute on a judgment, on the issue of whether there were some assets of the debtor subject to execution at the time of nonexecution. [Hickey v. Couchman](#), 797 S.W.2d 103 (Tex. App. Corpus Christi 1990), writ denied, (Feb. 13, 1991).
- 7                   [Hickey v. Couchman](#), 797 S.W.2d 103 (Tex. App. Corpus Christi 1990), writ denied, (Feb. 13, 1991) (sheriff failed to carry burden).
- 8                   State ex rel. Mather v. Carnes, 551 S.W.2d 272 (Mo. Ct. App. 1977) (overruled on other grounds by, [Hensel v. American Air Network, Inc.](#), 189 S.W.3d 582 (Mo. 2006)).  
As to defenses of officer against charge for his or her failure to levy process, generally, see § 67.
- 9                   Valentino v. Oakland County Sheriff, 424 Mich. 310, 381 N.W.2d 397 (1986).
- 10                  First International Bank of Portal v. Lee, 19 N.D. 10, 120 N.W. 1093 (1909).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 138

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### F. Evidence

#### 2. Presumptions and Burden of Proof

### § 138. Wrongful, excessive, or insufficient levy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  138(1)

In an action against a peace officer for wrongful, excessive, or insufficient levy, an execution is not competent evidence of the officer's possessory rights without proof of the judgment on which the execution was issued.<sup>1</sup>

In an action for a wrongful levy on personal property, it has been said that the burden of proof rests upon the plaintiff to establish, before recovery, title and right of possession to have been in it at the time of the levy where both title and possession at such time are in dispute under conflicting testimony therein.<sup>2</sup>

One who attacks a levy as void for excessiveness or insufficiency carries the burden of sustaining his or her contention.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Hoover v. Jones](#), 84 Neb. 662, 121 N.W. 975 (1909).

<sup>2</sup> [Wipperman Mercantile Co. v. Robbins](#), 23 N.D. 208, 135 N.W. 785 (1912).

Instructions informing a jury that a deputy sheriff did not have actual authority to seize property at issue in the case, and that the only issue for them to decide was whether the deputy had acted knowingly and intentionally or only negligently in seizing the property, were adequate in the property owners' action against the deputy alleging that he seized the second half of a modular home, which they owned and were causing to install on their property, in order to satisfy a judgment that a company had obtained against a contractor. [Cady v. Marcella](#), 57 Mass. App. Ct. 1114, 785 N.E.2d 427 (2003).

3 [Bridger v. Exchange Bank, 126 Ga. 821, 56 S.E. 97 \(1906\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 139

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### F. Evidence

#### 2. Presumptions and Burden of Proof

### § 139. Failure to safeguard property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  138(1)

Where, in an action against a sheriff for the negligent keeping of property levied on, it is proved or admitted that the property has been damaged, destroyed, or stolen, it becomes the duty of the sheriff to go forward with the proof to show, if the sheriff can, that proper care in the keeping of the property was, in fact, exercised by him or her.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [State, to Use of Henderson, v. Clark](#), 41 Del. 246, 20 A.2d 127, 138 A.L.R. 704 (1941).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 140

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

#### F. Evidence

#### 2. Presumptions and Burden of Proof

### § 140. Failure to make return

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  138(1)

The burden is on the sheriff, if there is no return of process, to show an excuse for the nonreturn.<sup>1</sup>

In an action for failure to return a writ of execution, the burden is upon the plaintiff to establish that there was property subject to levy which the officer failed to seize.<sup>2</sup>

The plaintiff must establish the value of the property subject to levy.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Com. v. McCoy](#), 8 Watts 153, 1939 WL 1620 (Pa. 1939).

<sup>2</sup> [Ehlers v. Gallagher](#), 147 Neb. 97, 22 N.W.2d 396 (1946).

<sup>3</sup> [Ehlers v. Gallagher](#), 147 Neb. 97, 22 N.W.2d 396 (1946).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 141

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### F. Evidence

#### 2. Presumptions and Burden of Proof

### § 141. Amount of damages

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  138(1)

When nonfeasance or misfeasance of a sheriff, constable, or other peace officer has been proved or admitted, the presumption arises that damage resulted, and the burden then rests upon the officer to prove a legal excuse or evidence to minimize the amount of damages.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Isenman v. Burnell](#), 125 Me. 57, 130 A. 868 (1925); [Valentino v. Oakland County Sheriff](#), 134 Mich. App. 197, 351 N.W.2d 271 (1984), decision aff'd in part, rev'd in part on other grounds, 424 Mich. 310, 381 N.W.2d 397 (1986).

Although an execution sale after a levy upon the debtor's undivided one-half interest in real property that he owned jointly with his wife as tenant by the entirety would not have extinguished the interest of the debtor's wife in the property, nor destroyed her right of survivorship should her husband predecease her, a creditor who was seeking damages from the sheriff for the sheriff's failure to file notice of attachment on the debtor's real property and established that the debtor and his wife received approximately \$7,000 for their interests when they sold the property established a prima facie case for recovery of \$3,500 damages and the burden would be on the sheriff to prove any mitigation of damages. [Doran v. Sheriff of Orange County](#), 57 A.D.2d 605, 393 N.Y.S.2d 785 (2d Dep't 1977).

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 142

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### F. Evidence

#### 2. Presumptions and Burden of Proof

### § 142. In action on officer's bond

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  138(1)

The general principles of evidence apply to actions on officers' bonds. Thus, the burden of proof in an action upon an officer's bond is upon the plaintiff, and he or she must show a prima facie neglect of duty.<sup>1</sup> The plaintiff must also prove the existence of property subject to levy.<sup>2</sup>

In a suit on a sheriff's bond, for failure to execute or return final process, the presumption is that the plaintiff has been damaged to an amount equal to the execution, and the burden is upon the defendant to mitigate the damages or show that the plaintiff was not injured by the breach of official duty.<sup>3</sup> Thus, if any defense applies to a sheriff's failure to execute, the sheriff may show mitigation of damages, which is established by proof that the market value of the debtor's nonexempt property is less than the amount of the underlying judgment held by the plaintiff in execution.<sup>4</sup> However, in a suit for damages for failure to execute an attachment or other mesne process, there is no such presumption, and the burden is upon the plaintiff, who must allege and prove actual damages in order to recover on the bond.<sup>5</sup>

In an action against a sheriff and his or her sureties for permitting attached property to be taken from the sheriff's custody, his or her return upon the writ of attachment, positively stating that the property belonged to the defendants named in the writ, is an admission of a fact against his or her interest, made in the course of official business, and is prima facie evidence of such fact both against the sheriff and his or her sureties.<sup>6</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

1                   § 134.  
The court of appeals' distaste for a deputy's use of racial epithets in an official conversation with another  
deputy and the court's empathy with the arrestee's reaction upon discovering the contents of the taped  
conversation did not relieve the arrestee of the burden to establish as matter of law a permissible theory of  
recovery against the deputy's bond. [Booth v. Firemen's Ins. Co. of Newark, New Jersey, 223 Ga. App. 243,](#)  
[477 S.E.2d 376 \(1996\).](#)  
2                   [McGuire v. Bausher, 57 A.D. 201, 68 N.Y.S. 284 \(2d Dep't 1901\).](#)  
3                   [Beck & Gregg Hardware Co. v. Knight, 121 Ga. 287, 48 S.E. 930 \(1904\).](#)  
The most important defense to a sheriff's failure to execute is that the plaintiff in execution was not injured  
by the failure, and this may be established by showing the debtor is insolvent and no amount of diligence  
by the sheriff could have recovered any sum, that the debtor's assets are exempt, or by intervention of the  
bankruptcy court. [Hickey v. Couchman, 797 S.W.2d 103 \(Tex. App. Corpus Christi 1990\),](#) writ denied, (Feb.  
13, 1991).  
4                   [Hickey v. Couchman, 797 S.W.2d 103 \(Tex. App. Corpus Christi 1990\),](#) writ denied, (Feb. 13, 1991).  
5                   [Beck & Gregg Hardware Co. v. Knight, 121 Ga. 287, 48 S.E. 930 \(1904\).](#)  
6                   [Phillips v. Eggert, 145 Wis. 43, 129 N.W. 654 \(1911\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government  
Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables X G Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

**X. Actions; Practice and Procedure**

**G. Settlement; Judgment and Enforcement**

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#) 🔑 141

### A.L.R. Library

A.L.R. Index, Constables  
A.L.R. Index, Deputies  
A.L.R. Index, Judgments, Orders, and Decrees  
A.L.R. Index, Marshals  
A.L.R. Index, Police and Law Enforcement Officers  
A.L.R. Index, Public Officers and Employees  
A.L.R. Index, Settlement  
A.L.R. Index, Sheriffs  
West's A.L.R. Digest, [Sheriffs and Constables](#) 🔑 141

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 143

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

#### G. Settlement; Judgment and Enforcement

### § 143. Settlement

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  141

A county sheriff, in his or her official capacity, may be legislatively vested with the authority to settle litigation filed against the sheriff's office and to direct the office to pay that settlement pursuant to statutory provisions.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Carver v. Sheriff of La Salle County](#), 203 Ill. 2d 497, 272 Ill. Dec. 312, 787 N.E.2d 127 (2003) (the sheriff was a local public entity under the law, and under the law, a local public entity could make payments to settle a claim filed against that public entity when the person vested by law or ordinance with authority to make overall policy decisions for such entity considered it advisable to enter into such a settlement or compromise). A settlement agreement, which contained a paragraph specifically limiting parents' speech regarding the deputy, did not violate the parents' right to free speech as regards the sheriff deputy's counterclaims against the parents of a deceased child for defamation, abuse of process, intentional infliction of emotional distress, and negligent infliction of emotional distress, where the parents offered no evidence that their First Amendment rights were not voluntarily, knowingly, and intelligently waived, and the parents insisted on inclusion of the paragraph in the agreement. [Estate of Barber v. Guilford County Sheriff's Dept.](#), 161 N.C. App. 658, 589 S.E.2d 433 (2003).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 144

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

#### G. Settlement; Judgment and Enforcement

### § 144. Judgment and enforcement

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  141

A judgment against a sheriff is enforceable only to the extent that any other judgment against a public agency is enforceable and is subject to the bar against seizure of public funds.<sup>1</sup>

The legislature intended to make the scope of a statute providing for payment of a judgment for damages against a public officer by the State or political subdivision of which he or she is an officer as broad as possible, and the exception of actions for false arrest from such provision makes it clear that the public officers to be protected included police officers, marshals, constables, and the like.<sup>2</sup>

In an action against a sheriff for damages for refusing to sell land on execution, where the court finds that the complicated condition of the title justified the sheriff in refusing to sell, it is proper to render a decree directing the sale, but exonerating the sheriff, where no damages appear to have been sustained.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [Riley v. Evangeline Parish Sheriff's Office](#), 637 So. 2d 395 (La. 1994).  
A sheriff would be ordered to pay any amounts due to a judgment creditor, to the extent that sovereign immunity was waived, and seek indemnification from excess carriers, where the judgment creditor had already signed a waiver of claims against excess carriers based on the court's earlier erroneous assumption that the balance of the judgment owed would be available from the sheriff's self-insurance pool but funds available from this pool had been exhausted in payment of defense costs. [Hattaway v. McMillian](#), 859 F. Supp. 560 (N.D. Fla. 1994).

- 2                    [Larson v. Lester, 259 Wis. 440, 49 N.W.2d 414 \(1951\)](#) (any act of a sheriff would be excluded by reason of constitutional provision from the statutory provision for payment of any judgment for damages against a public officer by the State or political subdivision of which he or she was an officer).
- 3                    [Porter v. Trompen, 96 N.W. 226 \(Neb. 1901\)](#).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables X H Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### X. Actions; Practice and Procedure

### H. Damages; Costs

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#) 🔑 139, 143

### A.L.R. Library

A.L.R. Index, Constables  
A.L.R. Index, Deputies  
A.L.R. Index, Marshals  
A.L.R. Index, Police and Law Enforcement Officers  
A.L.R. Index, Public Officers and Employees  
A.L.R. Index, Sheriffs  
West's A.L.R. Digest, [Sheriffs and Constables](#) 🔑 139, 143

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 145

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

#### H. Damages; Costs

#### 1. In General

### § 145. Tortious conduct

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [139](#), [143](#)

#### A.L.R. Library

[Recovery for Emotional Distress Resulting from Actions of Law Enforcement Officers](#), 101 A.L.R.5th 515

Where a police officer admits to unlawfully restraining an individual during an incident, thereby depriving the individual of his or her protected interest in freedom of movement, the individual's emotional distress is to be considered in determining damages arising from the officer's tortious conduct.<sup>1</sup>

The unjustifiable killing, by an officer, of a person whom he or she has arrested may render the officer liable for punitive damages.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Jones v. Department of Highway Safety](#), 62 Ohio Misc. 2d 643, 610 N.E.2d 624 (Ct. Cl. 1988).

<sup>2</sup> [Growbarger v. U.S. Fidelity & Guaranty Co.](#), 126 Ky. 118, 31 Ky. L. Rptr. 555, 102 S.W. 873 (1907).

An award of \$50,000 in punitive damages was not excessive in an arrestee's [42 U.S.C.A. § 1983](#) action against a police officer, in light of evidence that the arrestee was an innocent bystander, did nothing to

provoke the police except for the fact that he was expressing concern about police misconduct against others, and was compliant with officers and submitted to arrest; the officer gratuitously struck him in the back of the head, kneed him, and threw him to the ground after he was handcuffed, and other officers made no attempt to identify the officer despite witnesses' detailed description. [Burbank v. Davis, 238 F. Supp. 2d 317 \(D. Me. 2003\)](#).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 146

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### H. Damages; Costs

###### 1. In General

### § 146. Failure to execute process; insufficient levy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [139](#), [143](#)

#### Trial Strategy

[Sheriff's Negligent Failure to Attach Property](#), 17 Am. Jur. Proof of Facts 2d 715

As a general rule, the measure of damages for failure to execute process, or for an insufficient levy, is the actual injury or loss sustained by reason thereof and not necessarily the amount of the debt.<sup>1</sup> Thus, if the market value of a debtor's nonexempt property is less than the amount of the underlying judgment held by the plaintiff in execution, the plaintiff is entitled to recover against the sheriff for failure to execute only that amount the plaintiff would have recovered if the sheriff had been diligent.<sup>2</sup>

A plaintiff in execution is entitled to a judgment against a sheriff for failure to execute in the full amount of the plaintiff's underlying judgment against a debtor, including the amount of attorney's fees awarded in the underlying judgment.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1                    [State ex rel. Mather v. Carnes](#), 551 S.W.2d 272 (Mo. Ct. App. 1977) (overruled on other grounds by, [Hensel v. American Air Network, Inc.](#), 189 S.W.3d 582 (Mo. 2006)); [Doran v. Sheriff of Orange County](#), 72 A.D.2d 553, 420 N.Y.S.2d 768 (2d Dep't 1979).
- 2                    [Hickey v. Couchman](#), 797 S.W.2d 103 (Tex. App. Corpus Christi 1990), writ denied, (Feb. 13, 1991) (on motion by a plaintiff in execution for damages as a result of a sheriff's failure to execute judgment, the trial court was not required to find ownership, value, and exempt status of each asset of the debtor since the ultimate and controlling issue was whether the aggregate value of nonexempt assets owned by the debtor was greater than the amount of the underlying judgment held by the plaintiff in execution).  
Evidence, that a dune buggy, inflatable boat, two satellite systems, three motorcycles, and many other assets were in possession of the debtor and that a divorce decree awarded these assets to the debtor was sufficient to support a finding on a motion for damages for failure to execute, that at the time of nonexecution, the debtor owned nonexempt assets of value greater than \$3,164, the amount of the plaintiff in execution's underlying judgment. [Hickey v. Couchman](#), 797 S.W.2d 103 (Tex. App. Corpus Christi 1990), writ denied, (Feb. 13, 1991).
- 3                    [Hickey v. Couchman](#), 797 S.W.2d 103 (Tex. App. Corpus Christi 1990), writ denied, (Feb. 13, 1991).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 147

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

#### H. Damages; Costs

#### 1. In General

### § 147. Wrongful levy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [139](#), [143](#)

In the absence of any statutory provision to the contrary,<sup>1</sup> the measure of damages for a wrongful levy of process by a sheriff is such sum as will fairly compensate the injured party for the injury actually suffered.<sup>2</sup>

If the property wrongfully levied on is afterwards returned to the owner, the damages recoverable are only those caused by the detention of the property.<sup>3</sup>

The return by a sheriff, uninjured and with notice to the mortgagee, of mortgaged property seized for a debtor of the mortgagor without satisfying the mortgage debt, as required by statute, may be considered in mitigation of the damages which the mortgagee may recover for the conversion although he or she does not consent to the return.<sup>4</sup>

A law enforcement officer who levies execution on property owned by a person other than the judgment debtor named in the writ may be held responsible for the damages suffered by that innocent third person as a consequence of the wrongful levy,<sup>5</sup> and recovery by a third party against the sheriff may include any and all damages arising from or incident to the illegal seizure, sale, and detention of property.<sup>6</sup>

The owner of personal property who prevails against a sheriff's office in a suit for wrongful seizure or conversion of the personal property is entitled to an award of costs both in the trial court and the appellate court even though the trial court judgment is silent as to an award of costs.<sup>7</sup> Where no statute or case authorizes the recovery of attorney's fees in this type of action, a plaintiff seeking damages for a wrongful seizure under a writ of execution is not allowed to recover attorney's fees as part of damages.<sup>8</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Flagship State Bank of Jacksonville v. Carantzas](#), 352 So. 2d 1259 (Fla. 1st DCA 1977) (statute prohibiting sheriff from being liable for damages for wrongful levy).
- 2 [Palmer v. U.S., to Use of Lane](#), 41 App. D.C. 341, Am. Ann. Cas. 1915B, 1216, 1914 WL 21872 (App. D.C. 1914); [Dixie Sav. and Loan Ass'n v. Pitre](#), 751 So. 2d 911 (La. Ct. App. 5th Cir. 1999), writ denied, 751 So. 2d 855 (La. 1999) (the trial court acted within its discretion in awarding \$4,000 in general damages in a trailer owners' action against a mortgagee and sheriff for wrongful seizure and conversion of personal property that was inside the trailer at the time of the seizure).
- 3 [Maxwell v. Speth](#), 9 Ga. App. 745, 72 S.E. 292 (1911).
- 4 [Whittler v. Sharp](#), 43 Utah 419, 135 P. 112 (1913).
- 5 [Bethel v. Dunipace](#), 57 Ohio App. 3d 89, 566 N.E.2d 1252 (3d Dist. Hancock County 1988).
- 6 [Tilly v. Woodham](#), 166 So. 876 (La. Ct. App. 2d Cir. 1936).
- 7 [Thomas v. St. Charles Parish](#), 613 So. 2d 698 (La. Ct. App. 5th Cir. 1993).
- 8 [Williams v. Brooks](#), 269 Ark. 919, 601 S.W.2d 592 (Ct. App. 1980).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 148

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

#### H. Damages; Costs

#### 1. In General

### § 148. Wrongful levy—Exemplary damages

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  139(4)

Exemplary damages may be awarded for wrongful levy even though the officer had no personal acquaintance with or ill will against the defendant, if the officer willfully and knowingly allowed himself or herself to become the tool of attaching creditors whose object was apparently malicious, in making an unlawful levy in a highhanded and oppressive way.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Giddings v. Freedley, 128 F. 355 \(C.C.A. 2d Cir. 1904\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 149

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

#### H. Damages; Costs

#### 1. In General

### § 149. Loss of property held under process

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [139](#), [143](#)

If the value of property is less than the judgment, the value of the property lost is the limit of damages.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [State ex rel. Mather v. Carnes](#), 551 S.W.2d 272 (Mo. Ct. App. 1977) (overruled on other grounds by, [Hensel v. American Air Network, Inc.](#), 189 S.W.3d 582 (Mo. 2006)); [Fidelity & Deposit Co. of Md. v. First Nat. Bank](#), 88 S.W.2d 605 (Tex. Civ. App. Waco 1935), writ refused.

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 150

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### H. Damages; Costs

###### 1. In General

### § 150. False return

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  139, 143

Although the value of property at issue is ordinarily the measure of damages in an action against a sheriff for false return, a number of cases have upheld an award of nominal damages on the theory that such damages at least will be presumed from the filing of a false return of process intended to support a personal judgment.<sup>1</sup>

A plaintiff may even seek punitive damages in an action for false return.<sup>2</sup> Under some of the statutes providing for punitive damages, it is immaterial whether the plaintiff suffered any damages as a result of the sheriff's filing of a false return.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [State ex rel. Armour Packing Co. v. Dickmann](#), 146 Mo. App. 396, 124 S.W. 29 (1910).
- <sup>2</sup> [Douglas v. Hoeh](#), 595 S.W.2d 434 (Mo. Ct. App. E.D. 1980) (without holding on the issue of punitive damages; reversing and remanding the lower court decision on the issue of instructions to jury).
- <sup>3</sup> [Rollins v. Gibson](#), 293 N.C. 73, 235 S.E.2d 159 (1977).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 151

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

#### H. Damages; Costs

#### 1. In General

### § 151. Wrongful sale after levy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [139](#), [143](#)

Where a sheriff holding two executions against property sells the property under the junior execution, he or she is liable for the value of property at the time of the sale and not merely for the difference between the price obtained and that which could have been obtained by a sale under the senior execution.<sup>1</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Continental Distributing Co. v. Hays](#), 86 Wash. 300, 150 P. 416 (1915).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 152

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### H. Damages; Costs

##### 1. In General

### § 152. Acts of deputy, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  139, 143

Where the sheriff is held liable for the acts of his or her deputy,<sup>1</sup> exemplary or punitive damages are allowed in some cases,<sup>2</sup> such as where an arrest by the deputy was wrongful or malicious.<sup>3</sup> However, it has been said that an officer is not answerable in exemplary damages for the acts of his or her deputies except under circumstances in which a master would be answerable in such damages for the acts of his or her servant<sup>4</sup> or unless the sheriff directed, participated in, acquiesced in, or ratified the acts of his or her deputy.<sup>5</sup>

#### Observation:

If the plaintiff desires to charge the sheriff with punitive damages on the ground of ratification, the plaintiff must make his or her cause of action complete before commencing suit by informing the sheriff of the facts and giving the sheriff an opportunity to redress the wrong before being forced to defend it. In this connection, the fact that a deputy sheriff is not discharged but, on the other hand, is continued in office after the sheriff is informed of his or her oppressive misconduct in the service of a writ is evidence of his or her ratification of such conduct.<sup>6</sup>

However, under the law of some states, even though the sheriff is legally responsible for the acts of his or her deputies, the sheriff is not liable for exemplary damages.<sup>7</sup>

Moreover, the statute of another jurisdiction limits the sheriff's liability for acts committed by his or her deputy to the amount of liability insurance furnished by the deputy.<sup>8</sup>

Because a suit brought by an arrestee's mother and sister alleging tort claims against a county sheriff and his deputies in their official capacities arising from the arrest of a family member was in fact a suit against the sheriff's office, no punitive damages could be had against the defendants in their official capacity.<sup>9</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 As to liability of sheriff for acts of deputy, generally, see §§ 56 to 62.
- 2 *McDaniel v. Carroll*, 457 F.2d 968 (6th Cir. 1972).
- 3 *State ex rel. Coffelt v. Hartford Acc. & Indem. Co.*, 44 Tenn. App. 405, 314 S.W.2d 161 (1958).
- 4 *Foley v. Martin*, 142 Cal. 256, 75 P. 842 (1904).
- 5 *Boies v. Cole*, 99 Ariz. 198, 407 P.2d 917 (1965); *Dogarin v. Connor*, 6 Ariz. App. 473, 433 P.2d 653 (1967).
- 6 *Foley v. Martin*, 142 Cal. 256, 75 P. 842 (1904).
- 7 *Dean v. Gladney*, 451 F. Supp. 1313 (S.D. Tex. 1978), judgment *aff'd* in part, *rev'd* in part on other grounds, 621 F.2d 1331 (5th Cir. 1980).
- 8 *Chatzicharalambus v. Petit*, 430 F. Supp. 1087 (E.D. La. 1977).
- 9 *Russ v. Causey*, 732 F. Supp. 2d 589 (E.D. N.C. 2010), *aff'd* in part, 468 Fed. Appx. 267 (4th Cir. 2012) (applying North Carolina law).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 153

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### H. Damages; Costs

##### 2. Action on Officer's Bond

## § 153. Sureties as liable only for actual damages, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [139](#), [143](#)

Even though there are some decisions to the contrary,<sup>1</sup> according to the weight of authority, sureties upon official bonds, in the absence of statute, are liable only for actual damages which one may sustain, resulting from a breach of the bond, and not punitive damages.<sup>2</sup> The courts frequently observe that the covenants of the bond do not require the sureties to do more than compensate an injured party for actual damages which he or she may have sustained by reason of the misconduct of the officer, and that such covenants do not require them to pay a sum of money inflicted by way of punishment, even for the wrongful act of the deputy in killing a person due to a mistake as to the person's identity.<sup>3</sup>

Under the statutes in some jurisdictions, a party damaged by the breach of a sheriff's bond may recover the expenses of the suit in addition to the costs of court, and this includes necessary and reasonable attorney's fees.<sup>4</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

- <sup>1</sup> [Ewton v. McCracken](#), 9 Ala. App. 619, 64 So. 177 (1913).
- <sup>2</sup> [Growbarger v. U.S. Fidelity & Guaranty Co.](#), 126 Ky. 118, 31 Ky. L. Rptr. 555, 102 S.W. 873 (1907); [Yesel v. Watson](#), 58 N.D. 524, 226 N.W. 624, 64 A.L.R. 929 (1929).  
Tenants suing a constables' surety for abuse of process in the seizure of property in execution of a judgment for unpaid rent were not entitled to recover from the surety a sum exceeding the face amount of the surety bond where, under the bond "in a penalty" of this type, the penalty of the bond was the limit of liability. [Pepka v. Schang](#), 704 A.2d 127 (Pa. Super. Ct. 1997).
- <sup>3</sup> [Johnson v. Williams' Adm'r](#), 111 Ky. 289, 23 Ky. L. Rptr. 658, 63 S.W. 759 (1901).

4 [Hartford Acc. & Indem. Co. v. Young, 40 Ga. App. 843, 151 S.E. 680 \(1930\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 154

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### H. Damages; Costs

##### 2. Action on Officer's Bond

### § 154. Failure to make return

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  [139](#), [143](#)

In a suit on a sheriff's bond, for failure to execute or return final process, the presumption is that the plaintiff has been damaged to an amount equal to the execution.<sup>1</sup>

In several of the states, the amount of an officer's liability for not returning executions is fixed by statute. Under a statute providing that the recovery against the principal and surety for the default of the marshal must not be limited to the amount of the penalty named in the bond, the penalty named in a marshal's bond is not the limit of the surety's liability.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Beck & Gregg Hardware Co. v. Knight](#), 121 Ga. 287, 48 S.E. 930 (1904).

<sup>2</sup> [Growbarger v. U.S. Fidelity & Guaranty Co.](#), 126 Ky. 118, 31 Ky. L. Rptr. 555, 102 S.W. 873 (1907).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables X I Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### I. Appeal and Review


[Topic Summary](#) | [Correlation Table](#)

### Research References

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  142

#### A.L.R. Library

A.L.R. Index, Appeal and Error  
A.L.R. Index, Constables  
A.L.R. Index, Deputies  
A.L.R. Index, Marshals  
A.L.R. Index, Police and Law Enforcement Officers  
A.L.R. Index, Public Officers and Employees  
A.L.R. Index, Review  
A.L.R. Index, Sheriffs  
West's A.L.R. Digest, [Sheriffs and Constables](#)  142

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 155

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### X. Actions; Practice and Procedure

##### I. Appeal and Review

### § 155. Appeal and review, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#) 🔑 142

Under the statute, in a proceeding for a decree against a sheriff, the sheriff will properly be allowed a broad appeal, so as to bring up the whole decree for review, even though the surety did not appeal.<sup>1</sup>

However, a sheriff is deemed to have waived for appellate review his claim that he was entitled to qualified immunity in an action brought by an inmate against the sheriff, the sheriff's office, and the county for negligence and civil rights violations that resulted after the inmate was attacked by other prisoners at a jail facility where the sheriff first raised such issue in his motion for judgment as a matter of law following the jury verdict.<sup>2</sup>

An objection by a plaintiff to a sheriff's determination of ownership of property levied upon is not a matter for review by the court.<sup>3</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- <sup>1</sup> [State v. Bolt, 130 Tenn. 212, 169 S.W. 761 \(1914\).](#)
- <sup>2</sup> [Flanders v. Maricopa County, 203 Ariz. 368, 54 P.3d 837 \(Ct. App. Div. 1 2002\).](#)
- <sup>3</sup> [Altoona Pipe & Steel Supply Co. v. Reese, 58 Wes. C.L.J. 63 \(Pa. C.P. 1976\).](#)

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables XI Refs.

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### XI. Criminal Liability and Prosecution of Officer

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#) 🔑153

### A.L.R. Library

A.L.R. Index, Constables

A.L.R. Index, Contempt

A.L.R. Index, Deputies

A.L.R. Index, Marshals

A.L.R. Index, Police and Law Enforcement Officers

A.L.R. Index, Public Officers and Employees

A.L.R. Index, Sheriffs

West's A.L.R. Digest, [Sheriffs and Constables](#) 🔑153

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 156

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### XI. Criminal Liability and Prosecution of Officer

## § 156. Criminal responsibility of officer, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  153

### Trial Strategy

[Excessive Force by Police Officer, 21 Am. Jur. Proof of Facts 3d 685](#)

Criminal prohibitions do not generally apply to reasonable enforcement actions by officers of the law.<sup>1</sup> Thus, a peace officer is generally not criminally liable for the acts done in the proper exercise of his or her authority or official power, if the officer remains within the legal boundaries of his or her power as determined by the law of the particular jurisdiction,<sup>2</sup> and if he or she employs only such force as, under the circumstances, is reasonably necessary to carry out his or her official duties.<sup>3</sup> Law enforcement officers have no immunity from criminal prosecution nor are they accorded any special status with respect to the use of force except in making an arrest.<sup>4</sup> However, when a police officer uses excessive force in carrying out an arrest,<sup>5</sup> or when he or she makes an unlawful arrest, a battery is committed because that touching is not justified or excused and is unlawful.<sup>6</sup> If the officer uses more force than is reasonably necessary in effecting the arrest or preventing the escape of a person and as a result kills such person, he or she may be prosecuted for committing a culpable homicide.<sup>7</sup>

An arrestee stated a claim against a sheriff in his personal capacity for violation of his Fourth Amendment right to be free from unreasonable seizures in detaining him for eight days without judicial probable cause determination pursuant to the alleged policy, over which the sheriff was the final decision maker, of not ascertaining whether such determinations had been made.<sup>8</sup>

In addition, an officer acting under legal process which is regular on its face may nevertheless be guilty of larceny where he or she uses the authority of such process in order to gain possession of another's personal property with felonious intent to steal it

and appropriate it<sup>9</sup> or for robbery where, after making a legal arrest, the officer uses his or her authority to intimidate the victim and by force and violence takes his or her property.<sup>10</sup>

A sheriff may be liable for criminal prosecution under statutes forbidding accepting an award for the performance of a public duty and extortion.<sup>11</sup> Manipulation of his or her personal account may provide grounds for the conviction of a sheriff of obtaining money from the county commissioner by false pretenses or for a conviction under the statutory definition of embezzlement.<sup>12</sup>

The willful omission by a police officer of the performance of a duty specifically imposed upon the officer by statute constitutes a misdemeanor for which he or she may be prosecuted in some states.<sup>13</sup> Permitting a prisoner to leave the jail unescorted and unsupervised may also be the grounds for a conviction of malfeasance in office.<sup>14</sup> However, statutes defining the crimes of theft and unauthorized use of a movable, and the duties of the court regarding property seized pursuant to a search warrant, as well as duties of the clerk of court regarding disposition of property seized in connection with a criminal proceeding, do not impose any affirmative duties on officers of a sheriff's department which can lead to charges of malfeasance in office against them.<sup>15</sup>

As is the case with the civil liability of a sheriff for the acts of his or her deputies,<sup>16</sup> the jurisdictions are in conflict as to whether the sheriff is criminally responsible for the acts of his or her deputies, at least one jurisdiction holding that not only is the sheriff liable civilly for the acts of a deputy but the sheriff also is liable criminally and may be fined for the conduct of the deputy.<sup>17</sup> However, it has also been held that a sheriff is not criminally responsible for the acts of his or her deputies unless the sheriff authorizes, participates in, or ratifies such acts.<sup>18</sup>

A defendant's oath as a police officer to defend and obey the laws of the state, in of itself, does not make him or her strictly liable for official misconduct for all crimes he or she may commit.<sup>19</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

- 1 [Brogan v. U.S.](#), 522 U.S. 398, 118 S. Ct. 805, 139 L. Ed. 2d 830 (1998).
- 2 [Hansel v. Bisard](#), 30 F. Supp. 2d 981 (E.D. Mich. 1998); [Gross v. State](#), 186 Ind. 581, 117 N.E. 562, 1 A.L.R. 1151 (1917); [Briggs v. State](#), 90 Md. App. 60, 599 A.2d 1221 (1992).
- 3 [Donehy v. Commonwealth](#), 170 Ky. 474, 186 S.W. 161, 3 A.L.R. 1161 (1916); [Shields v. State](#), 187 Wis. 448, 204 N.W. 486, 40 A.L.R. 945 (1925).
- 4 [Bourie v. Department of Higher Educ.](#), 929 P.2d 18, 115 Ed. Law Rep. 83 (Colo. App. 1996).
- 5 [Drum v. Brimer](#), 22 F. Supp. 2d 1224 (D. Kan. 1998); [Gnadt v. Com.](#), 27 Va. App. 148, 497 S.E.2d 887 (1998).
- 6 [Gnadt v. Com.](#), 27 Va. App. 148, 497 S.E.2d 887 (1998).  
As to removal from office as part of sentence for conviction for malfeasance, misfeasance, or nonfeasance in office, see § 27.
- 7 [State v. Coleman](#), 186 Mo. 151, 84 S.W. 978 (1905); [Walsh v. Oehlert](#), 508 S.W.2d 222 (Mo. Ct. App. 1974); [Scarbrough v. State](#), 168 Tenn. 106, 76 S.W.2d 106 (1934); [State v. Boles](#), 598 S.W.2d 821 (Tenn. Crim. App. 1980).
- 8 [Lingenfelter v. Board of County Com'rs of Reno County, Kan.](#), 359 F. Supp. 2d 1163 (D. Kan. 2005).
- 9 [Luddy v. People](#), 219 Ill. 413, 76 N.E. 581 (1905); [Tones v. State](#), 48 Tex. Crim. 363, 88 S.W. 217 (1905).
- 10 [Tones v. State](#), 48 Tex. Crim. 363, 88 S.W. 217 (1905).
- 11 [State v. Moritz](#), 293 N.W.2d 235 (Iowa 1980).
- 12 [Baumgartner v. State](#), 21 Md. App. 251, 319 A.2d 592 (1974).
- 13 [People v. Herlihy](#), 66 A.D. 534, 73 N.Y.S. 236 (1st Dep't 1901), *aff'd*, 170 N.Y. 584, 63 N.E. 1120 (1902).

A county sheriff was "authorized by law to make and issue official certificates" and, thus, fell within the ambit of a statute making it a felony for a public official to issue a false certificate since the sheriff could not fully perform his functions without implied power to make official certificates. [People v. Buckallew](#), 848 P.2d 904 (Colo. 1993).

The offense of violation of an oath by a public officer was not established where the State did not prove that an oath of office was administered as averred in the indictment, since the indictment averred terms of the oath in detail and evidence regarding the oath actually administered did not set out the actual terms but instead stated that the defendant had taken an oath as deputy sheriff to perform his duties as a deputy sheriff and that the defendant was sworn to uphold the laws of the state as deputy sheriff; thus, while the entire oath did not have to be averred, where it was averred in the charge, it had to be proved as charged. [Jowers v. State](#), 225 Ga. App. 809, 484 S.E.2d 803 (1997).

[Baumgartner v. State](#), 21 Md. App. 251, 319 A.2d 592 (1974).

[State v. Authement](#), 532 So. 2d 869 (La. Ct. App. 1st Cir. 1988) (provisions imposing express affirmative duties on peace officers to whom a search warrant is directed to execute the warrant and bring the property into the court issuing the warrant did not provide a basis for charging a sheriff's deputy and chief of detectives with malfeasance in office with respect to the release of weapons already in the custody of the sheriff's department).

As to civil liability of sheriff for acts of deputies, generally, see §§ 56 to 62.

[Whited v. Fields](#), 581 F. Supp. 1444 (W.D. Va. 1984).

[State v. Harland](#), 94 Ohio App. 293, 51 Ohio Op. 448, 112 N.E.2d 682 (7th Dist. Geauga County 1953).

[State v. Kueny](#), 411 N.J. Super. 392, 986 A.2d 703 (App. Div. 2010) (applying New Jersey laws).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 157

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### XI. Criminal Liability and Prosecution of Officer

### § 157. Criminal liability of United States marshals under state law

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  153

A United States marshal cannot be guilty of a crime under the law of a state for his or her performance of necessary and proper actions.<sup>1</sup> In other words, a United States marshal is not subject to prosecution for violation of state law where the act complained of was done in his or her official capacity and under an honest belief that what the marshal did was necessary in the performance of his or her official duty.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> [Cunningham v. Neagle](#), 135 U.S. 1, 10 S. Ct. 658, 34 L. Ed. 55 (1890).

<sup>2</sup> [Petition of McShane](#), 235 F. Supp. 262 (N.D. Miss. 1964) (the chief of the executive office of the United States marshals, acting also as a deputy United States marshal, was entitled to a writ of habeas corpus in connection with a prosecution for violation of a state statute in the use of tear gas to quell a riot where such action was taken under an honest and reasonable belief that it was necessary in the performance of his duty to enforce a court order).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 158

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

#### XI. Criminal Liability and Prosecution of Officer

### § 158. Criminal liability of United States marshals under state law—Criminal liability for embezzlement

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  153

If a United States marshal, or any deputy, assistant, or employee of the marshal, retains or converts to his or her own use or to the use of another, or after demand by the party entitled thereto, unlawfully retains any money coming into his or her hands by virtue of his or her official relation, position, or employment, he or she is guilty of embezzlement and must, where the offense is not otherwise punishable by enactment of Congress, be fined under provisions of law, or not more than double the value of the money so embezzled, whichever is greater, or imprisoned not more than 10 years, or both. However, if the amount embezzled does not exceed \$1,000, he or she must be fined or imprisoned not more than one year or both.<sup>1</sup> It will not be a defense that the accused person had any interest in such moneys or fund.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

#### Footnotes

<sup>1</sup> 18 U.S.C.A. § 645.

<sup>2</sup> 18 U.S.C.A. § 645.

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 159

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### XI. Criminal Liability and Prosecution of Officer

## § 159. Contempt of court

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  153

A peace officer may be liable for contempt of court, and such acts have included the consumption of alcoholic beverages in the room of the defendant's counsel and in the company of a juror by a bailiff who had charge of the jury.<sup>1</sup> Similarly, a sheriff whose prisoner was lynched by a mob was guilty of contempt.<sup>2</sup>

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

### Footnotes

<sup>1</sup> [Poindexter v. State](#), 109 Ark. 179, 159 S.W. 197 (1913).

<sup>2</sup> [U.S. v. Shipp](#), 214 U.S. 386, 29 S. Ct. 637, 53 L. Ed. 1041 (1909).

---

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

## 70 Am. Jur. 2d Sheriffs, Police, and Constables § 160

American Jurisprudence, Second Edition | May 2021 Update

### Sheriffs, Police, and Constables

Romualdo P. Eclavea, J.D. and Alan J. Jacobs, J.D.

### XI. Criminal Liability and Prosecution of Officer

## § 160. Official misconduct or oppression

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Sheriffs and Constables](#)  153

### Trial Strategy

[Defense of a Police Misconduct Suit, 38 Am. Jur. Trials 493](#)

The statutes in some jurisdictions provide for the criminal liability of a peace officer for official misconduct or official oppression.<sup>1</sup> A number of such statutes have withstood constitutional challenges on the basis that they were too vague because the statute included a sufficiently precise definition of the prohibited conduct.<sup>2</sup> However, in one case, the law of constables' duties in tenant removals was so uncertain that a defendant constable could not be subjected to an official misconduct prosecution based on his charging for overseeing the removal of a tenant's goods.<sup>3</sup>

There can be no conviction of official oppression where the officer is not shown to have acted out of a wrongful, malicious intent to oppress<sup>4</sup> nor where the indictment fails to allege that the acts constituting the offense were committed by the peace officer in the exercise of or under the color of exercising the duties of the office.<sup>5</sup>

In some jurisdictions, a deputy sheriff is a "public official" for purposes of misconduct in office charges when the allegations supporting the charges arise from the performance of that deputy's official duties.<sup>6</sup> A defendant constable is a court officer who is a "public servant" for purposes of an official misconduct prosecution.<sup>7</sup>

Footnotes

- 1 [State v. Coburn](#), 220 Kan. 743, 556 P.2d 376 (1976).  
The prosecutor failed to show a nexus between a defendant's sexual relations with a 16-year-old girl which occurred while the defendant was on duty as a deputy sheriff and the defendant's status as a deputy sheriff, and thus, the trial court properly quashed an information charging the defendant with misconduct in office, where no evidence was presented that the conduct arose from the performance of his official duties, or that the defendant's office influenced the girl to have sexual relations with him on the subject occasion, and the evidence showed that the charged conduct arose from a long-standing sexual relationship with the girl. [People v. Perkins](#), 468 Mich. 448, 662 N.W.2d 727 (2003).  
Evidence that a sheriff's deputy engaged in consensual sexual intercourse with a confidential police informant, having first removed a warrant for her arrest from a law enforcement computer system, was sufficient to support his conviction for acceding to corruption, even where the jury acquitted the defendant of sexual assault based on the same evidence, where nonconsensual sex was not a constituent element of acceding to corruption or a required element of the "benefit," that is, sexual intercourse, the defendant was alleged to have received. [State v. Young](#), 42 S.W.3d 729 (Mo. Ct. App. W.D. 2001).
- 2 [State v. Riley](#), 381 So. 2d 1359 (Fla. 1980) (a state statute, which proscribed "official misconduct" and defined it as knowingly falsifying any official record or document with corrupt intent, was constitutional irrespective of the unconstitutional vagueness of another portion of the same statute, since it specifically defined the prohibited conduct so that those with common intelligence and understanding were given sufficient warning of what actions would constitute a violation, as it required a knowing falsification of documents, and since it limited the danger of arbitrary application to a constitutionally acceptable degree).
- 3 [State v. Grimes](#), 235 N.J. Super. 75, 561 A.2d 647 (App. Div. 1989).
- 4 [Lancaster v. Hill](#), 136 Ga. 405, 71 S.E. 731 (1911).  
A sheriff's entry into private areas of a corporation, by force or threat of arrest, to serve civil process on corporate employees would constitute "breaking or entering" and thus could violate Fourth Amendment rights. [Gateway 2000, Inc. v. Limoges](#), 1996 SD 81, 552 N.W.2d 591 (S.D. 1996).
- 5 [State v. Lackey](#), 271 N.C. 171, 155 S.E.2d 465 (1967).
- 6 [People v. Coutu](#), 459 Mich. 348, 589 N.W.2d 458 (1999) (the defendants were "public officials" for purposes of their misconduct in office charges, where the charges arose from the performance of their duties with the county sheriff's department work-release facility, based on allegations that they gave inmates preferential treatment in exchange for gifts and favors. In addition, one defendant was a "public official" where charges of misrepresenting overtime and ordering subordinates to chauffeur prominent county officials to various locations arose from the performance of his command duties as a deputy sheriff).
- 7 [State v. Grimes](#), 235 N.J. Super. 75, 561 A.2d 647 (App. Div. 1989).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.